

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2592

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 74-2592

- - - - - X - - - - -

PETER BARTOK,

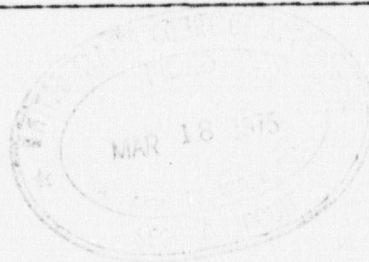
Plaintiff-Appellant,

- v -

BOOSEY and HAWKES, INC., and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants-Appellees.

APPELLANT'S APPENDIX



ORENSTEIN ARROW SILVERMAN & PARCHER, P.C.
Attorneys for Plaintiff-Appellant
1370 Avenue of the Americas
New York, New York 10019

PETER A. HERBERT
Of Counsel

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 74-2592

- - - - -X- - - - -

PETER BARTOK,

Plaintiff-Appellant,

- v -

BOOSEY and HAWKES, INC., and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants-Appellees.

APPELLANT'S APPENDIX

ORENSTEIN ARROW SILVERMAN & PRACHER, P.C.
Attorneys for Plaintiff-Appellant
1370 Avenue of the Americas
New York, New York 10019

PETER A. HERBERT
Of Counsel

INDEX TO APPENDIX

	<u>Page</u>
Docket Entries	1a
Notice of Motion	3a
Affidavit of Peter Bartok sworn to April 29, 1974. .	4a
Exhibit 1, Annexed to Foregoing Affidavit.	10a
Exhibit 2, Annexed to Foregoing Affidavit.	12a
Exhibit 3, Annexed to Foregoing Affidavit.	14a
Exhibit 4, Annexed to Foregoing Affidavit.	15a
Exhibit 5, Annexed to Foregoing Affidavit.	21a
Exhibit 6, Annexed to Foregoing Affidavit.	22a
Exhibit 7, Annexed to Foregoing Affidavit.	24a
Exhibit 8, Annexed to Foregoing Affidavit.	28a
Exhibit 9, Annexed to Foregoing Affidavit.	29a
Exhibit 10, Annexed to Foregoing Affidavit	30a
Exhibit 11, Annexed to Foregoing Affidavit	31a
Exhibit 12, Annexed to Foregoing Affidavit	32a
Exhibit 13, Annexed to Foregoing Affidavit	39a
Exhibit 14, Annexed to Foregoing Affidavit	41a
Exhibit 15, Annexed to Foregoing Affidavit	43a
Exhibit 16, Annexed to Foregoing Affidavit	44a
Exhibit 17, Annexed to Foregoing Affidavit	45a

	<u>Page</u>
Plaintiff's Statement Pursuant to Rule 9(G) of the General Rules.	49a
Notice of Cross Motion of Defendant Boosey and Hawkes, Inc.	55a
Affidavit of W. Stuart Pope in Opposition sworn to May 8, 1974.	56a
Exhibit I, Annexed to Foregoing Affidavit.	61a
Exhibit II, Annexed to Foregoing Affidavit.	62a
Defendant Boosey and Hawkes' Statement Pursuant to Rule 9(G) of the General Rules	65a
Notice of Cross Motion of Defendant Suchoff.	67a
Affidavit of Shirley P. Thau in Opposition sworn to May 29, 1974	68a
Exhibit A, Annexed to Foregoing Affidavit.	74a
Exhibit B, Annexed to Foregoing Affidavit.	79a
Exhibit C-1, Annexed to Foregoing Affidavit.	81a
Exhibit C-2, Annexed to Foregoing Affidavit	82a
Exhibit C-3, Annexed to Foregoing Affidavit.	83a
Exhibit C-4, Annexed to Foregoing Affidavit.	84a
Exhibit C-5, Annexed to Foregoing Affidavit.	85a
Exhibit C-6, Annexed to Foregoing Affidavit.	86a
Exhibit C-7, Annexed to Foregoing Affidavit.	87a
Exhibit C-8, Annexed to Foregoing Affidavit.	88a
Exhibit C-9, Annexed to Foregoing Affidavit.	89a

	<u>Page</u>
Defendant Suchoff's Statement Pursuant to Rule 9(G) of the General Rules.	90a
Opinion of the Court	92a
Judgment	103a

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 74-2592

- - - - - X - - - - -

PETER BARTOK,

Plaintiff-Appellant,

- v -

BOOSEY and HAWKES, INC., and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants-Appellees.

- - - - - X - - - - -

Docket Entries

<u>Date</u>	<u>Proceedings</u>
May 1-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed Plaintiffs Notice of Motion. Re: Summary Judgment Ret. 5/24/74.
May 1-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed Plaintiffs Statement pursuant to rule 9(g) of the General Rules.
May 10-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed Defendant's Statement pursuant to Rule 9(g) of the General Rules.
May 10-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed Defendant's Cross-Motion.

<u>Date</u>	<u>Proceedings</u>
June 3-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed defendant's (B. Suchoff) cross-motion on plaintiff's motion for summary. Ret. 6-14-74.
June 3-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed defendant's (B. Suchoff) affidavit in support of cross-motion & in opposition to plaintiff's motion.
June 3-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed defendant's (B. Suchoff) statement pursuant to Rule 9(g).
Sep.27-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed Opinion #41229. Ordered the motion for summary judgment of Boosey & Hawkes is granted & that of Peter Bartok is denied. Settle order on notice. Owen J. (mailed notice)
Oct.11-74	PETER BARTOK v. BOOSEY and HAWKES, INC., and BENJAMIN SUCHOFF as Trustee of the Estate of Bela Bartok. Filed Order & Judgment. Ordered that defendants motions for summary judgment are granted, & plaintiffs motion for summary judgment is denied & further ordered that Bartok's Concerto for Orchestra is as indicted. Owen J. Judgment Entered 10/15/74. Ent. 10/16/74. (mailed notice)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

PETER BARTOK,

Plaintiff,

-against-

BOOSEY & HAWKES INC. and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants.

NOTICE OF MOTION

73 Civ. 4570 (R.O.)

-----x

S I R:

PLEASE TAKE NOTICE that plaintiff pursuant to Rule 56 of the Federal Rules of Civil Procedure, will move this Court on the 24th day of May, 1974 before the Hon. Richard Owen, in Room 905, United States Courthouse, Foley Square, New York, New York, at 2:15 p.m., or as soon thereafter as counsel may be heard, for an order granting summary judgment in the above-entitled action, and for such other relief as this Court may deem just and proper.

Dated: New York, New York
April 30, 1974

Yours, etc.

ORENSTEIN, ARROW, SILVERMAN &
PARCHEE, P.C.

Attorneys for Plaintiff
1370 Avenue of the Americas
New York, New York 10019
Telephone No.: (212) 556-1451

By:

Peter A. Herdant
PETER A. HERDANT
Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BARTOK,

Plaintiff,

-against-

BOOSEY & HAWKES INC. and BENJAMIN
SUCHOFF, as Trustee of the Estate
of Bela Bartok,

Defendants.

AFFIDAVIT

73 Civ. 4570 (R.O.)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER BARTOK, being duly sworn, deposes and says:

1. I am a natural born son of the composer Bela Bartok, and submit this affidavit in support of my motion for summary judgment declaring that Bela Bartok's musical composition titled "CONCERTO FOR ORCHESTRA" (hereinafter the "Concerto") is not a "posthumous" work and that, in accordance with the express provisions of Section 24 of the Copyright Act, 17 U.S.C. §24, I, along with my mother and brother, succeed to the right to secure the renewal of the United States copyright in the Concerto.

2. On March 20, 1974, the original U.S. copyright term for the Concerto expired.

3. On March 21, 1973, I filed an application with the Copyright Office to claim the renewal copyright in the Concerto in my capacity as "child of the author", pursuant to

Section 24 of the Copyright Act. A copy of my application is annexed as Exh. 1.

4. On March 22, 1973 defendant Boosey & Hawkes, Inc. filed an adverse claim to secure the renewal copyright in its own name as "proprietor of a posthumous work". A copy of Boosey & Hawkes' application is annexed as Exh. 2.

5. The Copyright Office has accepted both applications pending a judicial determination of the rights of the respective parties and advised me that all administrative remedies for resolution of this conflict have been exhausted. A copy of the Copyright Office correspondence dated August 27, 1973 is annexed as Exh. 3.

6. On May 25, 1939, Bela Bartok entered into an agreement with Boosey & Hawkes, Ltd., the parent company of the defendant in this action, which granted Boosey & Hawkes, Ltd., or one of its wholly-owned subsidiaries, the exclusive right to publish the works of Bela Bartok which were then ready for publication or which would be completed during the contractual period, subject to the payment of royalties. The agreement further provided that the publisher was to commence production of an edition for publication not later than two months after receipt of a submitted manuscript and that publication was to be completed within four months thereafter, barring circumstances beyond the publisher's control. See ¶1, 3 of the 1939 Agreement, a copy of which is annexed as Exh. 4.

7. On October 8, 1943, Bela Bartok completed composition of the musical work "Concerto for Orchestra", commissioned earlier in that year by The Koussevitzky Music Foundation, Inc. A copy of the last page of the manuscript, evidencing the date of completion, is annexed as Exh. 5, and a copy of a letter from Ellis J. Freedman, formerly Acting Secretary of The Koussevitzky Music Foundation, dated April 22, 1974, is annexed as Exh. 6.

8. On November 25, 1943, pursuant to the terms of the 1939 Agreement with Boosey & Hawkes, Bela Bartok executed an assignment of all his ownership rights in the Concerto to Hawkes & Son, Ltd., a wholly-owned subsidiary of Boosey & Hawkes, Ltd. A copy of the 1943 Agreement is annexed as Exh. 7.

9. On or before December 27, 1943, Bela Bartok submitted to defendant Boosey & Hawkes, Inc. a corrected manuscript of the Concerto. See copy of Bela Bartok's letter to "Mr. Heinsheimer", then associated with Boosey & Hawkes, Inc., dated January 1, 1944, ¶2, annexed as Exh. 8.

10. In November 1944, Bela Bartok travelled to Boston, Massachusetts, to attend personally the rehearsals and the December 1, 1944, premiere performance of the Concerto by the Boston Symphony Orchestra at Symphony Hall. A copy of a portion of the Program Note pertaining to the December 1, 1944 performance, and the reviews of that performance in the December 2, 1944 editions of the Boston Herald and the Boston Daily Globe

are annexed as Exhs. 9 and 10, respectively. The Boston Herald review reports Bela Bartok's appearance on stage to acknowledge the audience's applause.

11. The Boston Symphony Orchestra repeated its public performance of the Concerto in Boston, Massachusetts, on December 2, 29 and 30 of the same year. A copy of the Boston Symphony Orchestra's file card reflecting the dates of such performances is annexed as Exh. 11. A copy of my father's letter to me, dated December 5, 1944, which describes the rehearsals, the performances on December 1 and 2 of that year, and his journey to Boston, with an accompanying translation is annexed as Exh. 12.

12. The Boston Symphony Orchestra's December 30, 1944 performance of the Concerto was broadcast live on WIDH radio in Boston and on WJZ radio in New York. Copies of the Boston Daily Globe and New York Times announcements of these broadcasts with photocopied enlargements thereof are annexed as Exhs. 13 and 14 respectively.

13. On January 10 and 13, 1945, Bela Bartok personally attended the debut performances of the Concerto at Carnegie Hall in New York. On both occasions my father was led to the stage where he received the public's tribute and acclaim. See copies of New York Times reviews of January 11 and January 14, 1945, annexed as Exhs. 15 and 16 respectively.

14. On September 26, 1945, approximately two years after he had composed the Concerto, twenty-two (22) months after he had assigned all his right, title and interest in the Concerto to Boosey & Hawkes, twenty-one (21) months after he had submitted the corrected manuscript to Boosey & Hawkes for publication, and ten (10) months after he was celebrated in the course of the presentation of his Concerto to the world in public concerts and radio broadcasts in major cities of the United States, Bela Bartok died.

15. On March 20, 1946, six (6) months after my father's death, Boosey & Hawkes issued the first edition of the Concerto's printed score with statutory copyright notice.

16. Parenthetically, it should be noted that after having completed the Concerto, Bela Bartok wrote his "Sonata for Solo Violin" (completed March 14, 1944), a song titled "The Husband's Grief" (completed February 1945), his "Concerto No. 3 for Piano and Orchestra" (finished at the time of his death, except for the orchestration of the last seventeen measures), and his "Viola Concerto" (unfinished except for the complete sketches), only the last of which was originally registered by Boosey & Hawkes as a "posthumous" work. See portions of Copyright Office Search Report of registrations of Bartok copyrights dated September 12, 1963, annexed as Exh. 17.

17. It is respectfully submitted that the Concerto, a work which: received wide public dissemination through several

media on numerous occasions well within my father's lifetime and with his cooperation; had been scheduled to appear in print more than a year before my father's death; had been assigned by my father to a publisher, and accordingly, was not among the literary properties which passed to my father's estate; and which was far from the last work of Bela Bartok, having been followed by at least three other major compositions, cannot by any reasonable standard be viewed as a "posthumous" work. Furthermore, the mere fact that a publisher fails to issue a formal printed "edition", for whatever reason, prior to an author's death, is by itself an insufficient ground for changing classification of the work to "posthumous", the effect of which would be to deprive the author's surviving widow and children of the rights guaranteed them under Section 24 of the Copyright Act.

WHEREFORE, I respectfully request that this Court grant my motion and declare that the "CONCERTO FOR ORCHESTRA" composed by Bela Bartok is not a "posthumous" work, and that his surviving widow and sons, as the eligible successor class pursuant to the provisions of Section 24 of the Copyright Act, are entitled to the renewal copyright in this composition.

Peter Bartok
PETER BARTOK

Sworn to before me this
27 day of April, 1974.

Deborah Nocerini
Notary Public

DEBORAH NOCERINI
Notary Public, State of New York
No. 30-4511761
Qualified in Notary College
Certificate filed in New York County
Commission Expires March 30, 1975

EXHIBIT 1, Annexed to Foregoing Affidavit

Page 3

Certificate of Registration of a Claim to
Renewal Copyright

FORM R

REGISTRATION NO.

R 549991

DO NOT WRITE HERE

This is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Alvin O. Feldman

ACTING
Register of Copyrights
United States of America

1. Renewal Claimant(s), Address(es), and Statement of Claim:

(a) Name Peter BartókAddress 205 West 54th Street, New York, N.Y., 10019Claiming as child of the author, Béla Bartók, deceased.

(b) Name

Address

Claiming as

(c) Name

Address

Claiming as

2. (a) Title:

CONCERTO; for orchestra

(b) Renewable Matter:

The entire work

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol. _____; No. _____; Issue Date _____

3. Authors of Renewable Matter:

Béla Bartók

4. Facts of Original Registration:

Original registration number: Class F. for 1281If registered as published, give date of publication March 20, 1946
(Month) (Day) (Year)If registered as unpublished, give date of registration _____
(Month) (Day) (Year)Original copyright claimant Hawkes & Son, Ltd.

Complete all applicable spaces on next page

EXAMINER
M

5. Deposit account:

11a

6. Send correspondence to:

Name Peter Bartók, c/o Bartók Records, 888 Seventh Ave., New York, N. Y., 10019

7. Send certificate to:

(Type or
print Name
name and
address) AddressPeter Bartók, c/o Bartók Records888 Seventh Avenue

(Number and street)

New York, N. Y., 10019

(City)

(State)

(ZIP Code)

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication; in the case of a work originally registered in unpublished form, the copyright term lasts for 28 years from the date of registration in the Copyright Office. In either case, the copyright may be renewed for a second 28-year term only if a claim is registered in the Copyright Office within the last (28th) year of the original copyright term. For example, a work copyrighted on June 15,

1943, would be eligible for renewal between June 15, 1970, and June 15, 1971.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires, copyright protection is lost permanently and the work enters the public domain. The Copyright Office has no discretion to extend the renewal time limits.

How to register your claim

Procedure to follow. Complete an application for renewal registration on Form R and send it to the Register of Copyrights, Washington, D.C. 20540. The application should be accompanied by the registration fee of \$4. Do not send copies of the work.

Who may claim renewal

Except in the case of four specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term. If the author is deceased, the statute gives the right to claim renewal to certain of his statutory beneficiaries as explained below. The present owner (proprietor) of a copyright is entitled to claim renewal only in the cases listed in Paragraph B, below.

A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below:

1. The author, if living. State the claim as: *the author*.

if there is no surviving widow, widower, or child. State the

2. The widow, widower, and/or children of the author, if the author is not living. State the claim as: *the widow (widower) of the author* and/or *the child*

claim as: *the executor(s) of the author*

(children) of the deceased author

(Name of author)

4. The next of kin of the author, if the author left no will and if there is no surviving widow, widower, or child. State the claim as: *the next of kin of the deceased author*

there being no will
(Name of author)

3. The author's executor(s), if the author left a will and

B. In the case of the following four types of works, the proprietor (owner of the copyright at the time of renewal registration) may claim renewal:

1. Posthumous work (work first published and copyrighted after the death of the author). State the claim as: *proprietor of copyright in a posthumous work*.

claim as: *proprietor of copyright in a work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author.* (This type of claim is considered appropriate in relatively few cases.)

2. Periodical, cyclopedic, or other composite work. State the claim as: *proprietor of copyright in a composite work*.

3. "Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author." State the

4. Work copyrighted by an employer for whom such work was made for hire. State the claim as: *proprietor of copyright in a work made for hire.*

FOR COPYRIGHT OFFICE USE ONLY

Application received

Fee received

187006 MAR 21 '73

Jan. 1971-75,000

Page 4

EXHIBIT 2, Annexed to Foregoing Affidavit

• P. 15

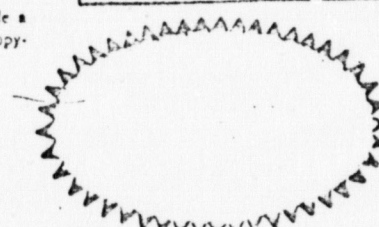
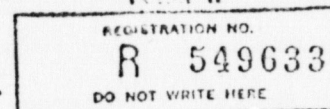
Certificate of Registration of a Claim to Renewal Copyright

This is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

ACTING

Register of Copyrights
United States of America

Abe A. Goldman



1. Renewal Claimant(s), Address(es), and Statement of Claim:

(a) Name Hawkes & Son (London) Ltd.Address 295 Regent Street, London, W.1A, 1 BR, EnglandClaiming as Proprietor of copyright in a posthumous work.

(b) Name

Address

Claiming as

(c) Name

Address

Claiming as

2. (a) Title:

CONCERTO FOR ORCHESTRA(Full Score)

(b) Renewable Matter:

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol. _____; No. _____; Issue Date _____

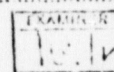
3. Authors of Renewable Matter:

Bela Bartok (dec'd)

4. Facts of Original Registration:

Original registration number: Class E FOR, No. 1281If registered as published, give date of publication March 20, 1946
(Month) (Day) (Year)If registered as unpublished, give date of registration _____
(Month) (Day) (Year)Original copyright claimant Hawkes & Son (London) Ltd.

Complete all applicable spaces on next page



Bosey & Hawkes, Inc.

6. Send correspondence to:

Name Bosey & Hawkes, Inc. Address 30 West 57th Street, New York, N.Y., 10019

7. Send certificate to:

(Type or
print Name
name and
address) Address

BOSEY & HAWKES, INC.		
30 West 57th Street		
(Number and street)		
New York,	N.Y.	10019
(City)	(State)	(ZIP Code)

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication; in the case of a work originally registered in unpublished form, the copyright term lasts for 28 years from the date of registration in the Copyright Office. In either case, the copyright may be renewed for a second 28-year term only if a claim is registered in the Copyright Office within the last (28th) year of the original copyright term. For example, a work copyrighted on June 15,

1942, would be eligible for renewal between June 15, 1969, and June 15, 1970.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires, copyright protection is lost permanently and the work enters the public domain. The Copyright Office has no discretion to extend the renewal time limits.

How to register your claim

Procedure to follow. Complete an application for renewal registration on Form R and send it to the Register of Copyrights, Washington, D.C. 20540. The application should be accompanied by the registration fee of \$4. Do not send copies of the work.

Who may claim renewal

Except in the case of four specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term. If the author is deceased, the statute gives the right to claim renewal to certain of his statutory beneficiaries as explained below. The present owner (proprietor) of a copyright is entitled to claim renewal only in the cases listed in Paragraph B, below.

A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below:

1. The author, if living. State the claim as: *the author*.
2. The widow, widower, and/or children of the author, if the author is not living. State the claim as: *the widow (and/or) of the author* and/or *the child (children) of the deceased author*.

if there is no surviving widow, widower, or child. State the claim as: *the executor(s) of the author*.

4. The next of kin of the author, if the author left no will and if there is no surviving widow, widower, or child. State the claim as: *the next of kin of the deceased author*.

3. The author's executor(s), if the author left a will and

there being no will.

B. In the case of the following four types of works, the proprietor (owner of the copyright at the time of renewal registration) may claim renewal:

1. Posthumous work (work first published and copyrighted after the death of the author). State the claim as: *proprietor of copyright in a posthumous work*.
2. Periodical, encyclopedic, or other composite work. State the claim as: *proprietor of copyright in a composite work*.
3. "Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author." State the claim as: *proprietor of copyright in a work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author*.

claim as: *proprietor of copyright in a work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author*. (This type of claim is considered appropriate in relatively few cases.)

4. Work copyrighted by an employee for whom such work was made for hire. State the claim as: *proprietor of copyright in a work made for hire*.

FOR COPYRIGHT OFFICE USE ONLY	
Application received	
Fee received	

EXHIBIT 3, Annexed to Foregoing Affidavit

OFFICE OF THE
REGISTER OF COPYRIGHTS

COPYRIGHT OFFICE
LIBRARY OF CONGRESS
WASHINGTON, D.C. 20540

AUG 27 1973

Mr. Peter Bartok
Bartok Records
883 Seventh Avenue
New York, New York 10019

Re: Your letters of August 10, 1973.

Dear Mr. Bartok:

The appeal procedure referred to in my letter of December 5, 1972 is appropriate only in connection with registration of a claim to copyright. Since we have no authority to resolve legal questions, no procedure has been established for the determination of conflicting claims. The requested renewal registration for CONCERTO FOR ORCHESTRA (EFor.-1201, March 20, 1946) having been made, no further action is appropriate in this office.

In connection with your renewal claim as "child of the author, Bela Bartok, deceased" covering FOR CHILDREN Vol. I (Epub-1612, February 20, 1946) and FOR CHILDREN Vol. II (Epub-1613, February 20, 1946), we find that renewal claims have already been registered as follows:

Renewal claims registered in the name of Boosey & Hawkes, Inc. as Proprietor of copyright in a posthumous work, under Numbers R-546642 and R-546643, respectively, on the basis of renewal applications received from Boosey & Hawkes, Inc. on February 22, 1973.

Although the claim presented in each of your applications is in conflict with the claims that have already been registered, in view of the explanation furnished in your letter of August 10, 1973, we are also proceeding with registration of your claims. Since we cannot resolve conflicting claims, it is our policy to place both on record so that the rights of the parties can be determined in the future, if necessary.

Sincerely yours,

(Mrs.) Lorna G. Mergolis

Lorna G. Mergolis
Head, Renewal & Assignment Section
Examining Division

EXHIBIT 4, Annexed to Foregoing Affidavit

AN AGREEMENT made the 25th day of May, One thousand Nine hundred and thirtynine BETWEEN BELA BARTOK of 11 Csalan-ut 92, Budapest, Hungary (hereinafter designated for easy reference 'the Composer') of the one part AND BOOSEY & HAWKES LIMITED of 295 Regent Street, London, W.1, (hereinafter designated for easy reference 'the Publishers') of the other part

WHEREBY IT IS AGREED AS FOLLOWS:

- (1) The Composer undertakes to submit to the Publishers all works of his composition and/or arrangement - vocal, instrumental, orchestral and stage - which may be at the date hereof ready for publication or which may be completed during the period of this agreement.
- (2) The Publishers warrant that one of their wholly owned subsidiary Companies Boosey & Company, Ltd. or Hawkes & Son (London), Ltd. shall acquire the copyright of all works submitted by the Composer during the period of this Agreement in accordance with the form of assignment attached hereto and under the terms as set out in the clauses in paragraph (15) hereof and will publish the said works (excluding stage works to which specific reference is made in paragraph (4) hereof) within a reasonable time.
- (3) Production of the edition for publication will be commenced not later than two months after the Publishers have received the MSS. and publication shall be completed within four months thereafter it being understood that any undue delay caused by circumstances beyond the control of the Publishers be always excepted. All works will be engraved with the exception of orchestral and chorus parts which will be printed by another process suitable for the purpose required. Full Scores will be either engraved (in which case Pocket Scores will be printed by photographic reduction) or printed by another suitable process.
- (4) The Publishers undertake to publish a Vocal Score of Stage works not exceeding the duration of one hour as soon as a Contract for the world premiere has been completed but in the case of Stage works of longer duration the Publishers shall not be obliged to publish a Vocal Score until a successful world premiere has taken place and Contracts for the performance of such work at any two Theatres in the territory of the United Kingdom of Great Britain, France, Belgium, Denmark, Germany, Italy, Hungary and the United States of America have been executed. Should the

Publishers for any reason whatsoever fail to publish a Vocal Score of such work within two years after the world premiere or fail to execute Contracts with any two Theatres as aforesaid the copyright in such work shall revert to the Composer and if in such case the libretto of the said work has been published the Publishers undertake to hand over the stock at cost price to the Composer or to any other Publisher the Composer may direct.

(5) The Composer undertakes to submit to the Publishers whenever possible a photograph copy of the MSS. of all works to be published under this Agreement such photograph copy to become the property of the Publishers. Should the Composer not be in a position to supply such photograph copy of any MS. the Publishers undertake to have this made at their own expense and further to send 1st and 2nd proofs to the Composer before the work is put in hand for printing and the Composer undertakes to read and return such proofs without undue delay. It is understood that the title (cover) page and the headlines of the music will be printed in English and Hungarian and if the Composer so requires the title shall be printed also in French on the inside title page. The Publishers undertake not to produce or print any of the works of the Composer in Germany.

(6) The Publishers undertake not to make or publish any arrangements of the works of the Composer or any alterations to or cuts from the said works in their original form without first obtaining the consent in writing of the Composer or his heirs and further the Publishers undertake to submit all such arrangements when made to the Composer or his heirs before printing.

(7) The Publishers undertake to notify the Composer within a reasonable time of the reprint of any work published under this Agreement in order that the Composer may make any necessary corrections but should the Composer not submit corrections for the reprint within three months after notification the Publishers shall have the right to put the reprint in hand.

(8) It is understood and agreed that the royalties and fees provided hereunder shall be due and payable to the Composer for deliveries to countries where monetary restrictions are in force even if the remittance has not been made to the Publishers within six months of the date of delivery but the Publishers shall have the right to refuse delivery to such countries should there be any reason to suppose that settlement will not be made within six months.

(9) The Publishers undertake to pay to the Composer the sum of eight guineas for every insertion of one of the works of the works of the Composer in Albums published by the Publishers or by one of their affiliated publishing houses. For the insertion of a chorus work in a collection of choruses the Publishers will pay to the Composer the sum of two pounds for each page of the Score insert. No fee is payable for Albums merely destined for publicity purposes and distributed free but if the edition of such Album exceeds 5,000 (five thousand) copies, the consent in writing of the Composer or his heirs has to be obtained before the printing.

(10) All net fees received by the Publishers for permission to reprint one of the works of the Composer in an Album issued by another Publisher to be divided 50% (fifty per cent) to the Composer and 50% (fifty per cent) to the Publishers.

(11) The Publishers undertake to furnish the Composer gratis with the under-mentioned copies of works published under the terms of this Agreement:

Five copies each Piano pieces, songs and chorus works
 (chorus works with orchestra excepted)
 Two copies each Opera and Orchestral Full Scores
 Three copies each Vocal Scores and Chamber Music works

(12) In the case of a work with text the Composer undertakes to submit to the Publishers a rough translation in German or English in addition to the text in the original language.

(13) The Composer reserves the right to assign the Hungarian edition of Chorus works without orchestra to a Hungarian Publisher such Publisher being obligated to obtain and register the U.S.A. and Hungarian copyright for such edition. It is however understood that the Publishers shall have the right to issue any such works published for the first time in Hungary with text for distribution in other countries the copyright in such work becoming the property of the Publishers for all countries.

(14) The Publishers shall render semi-annually to the Composer Statement of account made up to June 30th and December 31st in each year setting out the royalties and fees due to the Composer and the number of copies printed of the various individual works during each accounting period. Such Statements shall be dispatched to the Composer within ninety days of the end of each accounting

period accompanied by remittance in settlement of monies due or payment made at the direction of the Composer.

(15) It is agreed that the terms for publication of all works acquired by the Publishers during the period of this Agreement shall be:

- (a) A royalty of 15% (fifteen per cent) to be paid to the Composer on the marked selling price of all copies sold such royalty to be reduced to 10% (ten per cent) for Chorus parts and Chorus scores (part songs).
- (b) A royalty of 15% (fifteen percent) to be paid to the Composer on the fees received by the Publishers from the hire or purchase of orchestral material such royalty to be increased to 20% (twenty per cent) beginning from the fifty first contract for the hire or purchase of the material of any individual orchestral or stage work.
- (c) A royalty of 15% (fifteen per cent) to be paid to the Composer on fees accruing from the hire of Stage performance material.
- (d) In all cases where there is an Author to be considered it is understood and agreed that the royalties and fees payable to the Author shall be borne by the Composer but that any lump sum payable to the Author or copyright owner for the use of text or poems shall be borne by the Publishers who undertake also to pay the cost of any necessary translations into English, French, German or other languages.
- (e) In the event of a translation being required for Stage works, a separate Agreement shall be entered into which shall define the share payable to the translator of the text of such works in each individual case.
- (f) No royalties shall be payable to the Composer on copies used for advertising and review purposes but the Publishers undertake to furnish to the Composer at the usual accounting periods details of all such copies distributed gratis.

- (g) Performing Right Fees (including Broadcast Performance) if collected through the agency of the Performing Right Society, Ltd. to be divided two-thirds to the Composer and one-third to the Publishers for all countries of the world with the exception of the United States of America in which country such fees will be distributed 50% (fifty per cent) to the Composer and 50% (fifty per cent) to the Publishers.
- (h) Performing Right fees from Stage Performances to be divided in respect of Germany and the former Austro-Hungarian territory 80% (eighty per cent) to the Composer and 20% (twenty per cent) to the Publishers and in respect of the rest of the world 70% (seventy per cent) to the Composer and 30% (thirty per cent) to the Publishers.
- (i) All net royalties and fees received by the Publishers in respect of the mechanical adaptation of the said works to be divided two-thirds to the Composer and one-third to the Publishers after deduction not exceeding 10% (ten per cent) has been made towards the costs of collection. All such net royalties and fees received from countries where collection is effected through representatives of the Publishers to be divided two-thirds to the Composer and one-third to the Publishers without deduction for collection expenses.
- (j) All net royalties and fees received by the Publishers for reproduction in sound or talking films or pictures or television to be divided 50% (fifty per cent) to the Composer and 50% (fifty per cent) to the Publishers.

(16) THIS AGREEMENT shall come into operation on the first day of June, One thousand nine hundred and thirtynine and shall remain in force until the 31st day of May 1944 and continue thereafter for a further five yearly period unless determined by either party giving to the other party notice in writing six months prior to expiration of the first named period.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED by
the above named BELA BARTOK in the
presence of

BELA BARTOK (signed)

Pasitory Gynlone (signed)
Bartok Belane (signed)

SEAL

The Common Seal of Boosey & Hawkes, Ltd.
was affixed hereto in the presence of:

Leslie A. Boosey)
Geoffrey Hawkes) Directors

J.S. Little

Secretary

[Re-typed]

EXHIBIT 5, Annexed to Foregoing Affidavit

(600)
Riknudu

a. r. l. - - - al tempo (606)

1892

Handwritten musical score for 'Riknudu'. The score is written on multiple staves, featuring various musical notations including notes, rests, and dynamic markings such as *f* (forte) and *p* (piano). The tempo is indicated as *al tempo*. The score is divided into sections, with some parts marked with 'a. r. l.' (all right) and 'al tempo'. The notation includes various musical symbols, including notes, rests, and dynamic markings. The score is written in a cursive, handwritten style. The bottom right corner of the page contains the date '1943. Oct. 8.'

EXHIBIT 6, Annexed to Foregoing Affidavit

LOWENTHAL, FREEDMAN, LANDAU, FISCHER & TODRES, P. C.

250 PARK AVENUE

NEW YORK, N. Y. 10017

ABRAHAM M. LOWENTHAL

ELLIS J. FREEDMAN

EDWARD J. LANDAU

ROBERT E. FISCHER

SIDNEY TODRES

PETER S. KOLINS

MARTIN RICHARDS

NEAL T. DORMAN

April 22, 1974

TELEPHONE

(212) 956-1116

CABLE ADDRESS

'LOWENLAND'

ABRAHAM FRIEDMAN (899-1972)

Mr. Peter Bartok
205 West 54th Street
New York, N. Y. 10019

Dear Mr. Bartok:

As requested, I have been digging through the records of the Koussevitzky Music Foundation and have ascertained the following, which I hope will be helpful to you:

At a meeting of the Board of Directors of the Foundation held on March 14, 1943, Dr. Koussevitzky was authorized to work out an arrangement for commission with Bela Bartok. At the same meeting, it was decided that in making grants to composers "the Foundation would request the composers to dedicate the composition to The Koussevitzky Music Foundation, founded in memory of Natalie Koussevitzky, and would ask them to agree to deposit the manuscript with the Foundation after it is no longer needed for publication purposes."

The actual grant to your father was made at a meeting held on May 10, 1943 in the form of an appropriation of \$1,000, "of which sum \$500 is to be paid now and the balance when the manuscript is completed."

A pencil notation opposite this resolution indicates that \$500 was paid on May 4, 1943, a few days before the meeting, and the remaining \$500 on November 8, 1943.

The fact of completion and payment is confirmed by a copy of a financial statement for the period ending March 31, 1944, contained in the minute book, and reciting that it was taken from the check books. The financial statement recites an expenditure of \$1,000 to Bela Bartok. The only further information

LOWENTHAL, FREEDMAN, LANDAU, FISCHER & TODRES, P. C.

2.

that I am able to give you is what I mentioned to you on the telephone last week, namely, that the correspondence indicates that in 1949 the Bartok manuscript was turned over by the Foundation to the Library of Congress.

If I can be of any further help to you, please feel free to call upon me.

Very truly yours,


Ellis J. Freedman

EJF:pg

cc: Mrs. Olga Koussevitzky

EXHIBIT 7, Annexed to Foregoing AffidavitASSIGNMENT OF COPYRIGHT
to
HAWKES & SON (LONDON) LIMITED

I, BELA BARTOK, of New York City, New York, United States of America (hereinafter called the Assignor) for the considerations and covenants hereinafter mentioned as beneficial owner hereby assign to Hawkes & Son (London) Limited whose Registered Office is situate at 295 Regent Street, London, W.1, or its assigns (hereinafter called the Assignee) ALL the copyright, performing rights, mechanical rights, and all other rights whatsoever in and for all countries of the world which I now hold of and in the following composition or work of which I am the Composer:

CONCERTO FOR ORCHESTRA

and I hereby further assign or agree to assign to the Assignee all rights which may be hereafter conferred or created by law or International arrangement or convention whether by way of additional or other rights not now comprised in copyright as defined by the Copyright Act, 1911, or by way of extension of the period of then or now existing rights in so far as they shall be or become vested in me in respect of the said work or composition within the area aforesaid and I further agree to execute any document necessary to vest the said rights in the Assignee, its successors, or assigns.

And I hereby warrant that the said composition or work has never been before assigned or published.

And for the considerations and covenants hereinafter mentioned, I declare that the Assignee shall have the sole right to use and publish, produce and reproduce, or authorise to be used and published, produced and reproduced the said composition or work or any portion thereof respectively in any material form whatsoever, free from any royalty or further consideration.

The Assignee shall not have the right to issue any arrangement or transcription of the said composition or work without first securing the approval of the Assignor.

And for the considerations and covenants hereinafter mentioned I hereby irrevocably appoint the Assignee my Attorney and Attorneys for me and in my name and stead to do all acts and things in the Office of the Librarian of Congress, Washington, D.C., U.S.A. or elsewhere as may be required for registration, renewal or extension of the copyright or other rights in the before mentioned composition or work.

And the Assignee hereby covenants with the Assignor as folloed:

(a) A royalty of 15% (fifteen per cent) to be paid to the Assignor on the marked selling price of all copies of the said composition or work sold.

(b) A royalty of 15% (fifteen per cent) to be paid to the Assignor on the fees received by the Assignee from the hire or purchase of orchestral material such royalty to be increased to 20% (twenty per cent) beginning with the fifty-first contract for the hire or purchase of the material of the said composition or work.

(c) No royalties shall be payable to the Assignor on copies used for advertising and review purposes but the Assignee undertakes to furnish to the Assignor at the usual accounting periods details of all such copies distributed gratis.

(d) Performing Right Fees (including broadcast performance) if collected through the agency of the Performing Right Society, Ltd. to be divided two-thirds to the Assignor and one-third to the Assignee for all countries of the world with the exception of the United States of America in which country such fees will be distributed 50% (fifty per cent) to the Assignor and 50% (fifty per cent) to the Assignee.

(e) Performing Right Fees from Stage Performances to be divided in respect of Germany and the former Austro-Hungarian territory 80% (eighty per cent) to the Assignor and 20% (twenty per cent) to the Assignee and in respect of the rest of the world 70% (seventy per cent) to the Assignor and 30% (thirty per cent) to the Assignee.

(f) All net royalties and fees received by the Assignee in respect of the mechanical adaptation of the said composition or work to be divided two-thirds to the Assignor and one-third to the Assignee after deduction not exceeding 10% (ten per cent) has been made towards the costs of collection. All such net royalties and fees received from countries where the collection is effected through representatives of the Assignee to be divided two-thirds to the Assignor and one-third to the Assignee without deduction for collection expenses.

(g) All net royalties and fees received by the Assignee for reproduction in sound or talking films or pictures or television to be divided 50% (fifty per cent) to the Assignor and 50% (fifty per cent) to the Assignee.

IN WITNESS WHEREOF The Assignor has hereunto set his hand and seal and MAX WINKLER for and on behalf of the Assignee has hereunto set his hand this 25th day of November, 1943.

SIGNED, SEALED AND DELIVERED)
by the above name BELA BARTOK)
in the presence of)

BELA BARTOK (signed)

Seal

SIGNED BY MAX WINKLER)
for and on behalf of)
HAWKES & SON (LONDON) LIMITED)
in the presence of)

FOR AND ON BEHALF OF

HAWKES & SON (LONDON) LIMITED

(Signed)

[Re-typed]

EXHIBIT 8, Annexed to Foregoing Affidavit

Albemarle Inn
Asherville, N. C.

Jan. 1, 1944

Dear Mr. Heinsheimer,

The mail service to Asherville has its shortcomings: an ordinary letter takes 3 days, an air-rail 5 days, a bulky piece 7 days to arrive. At least this was the case with your letters. Otherwise, this is a very convenient place. everything is all right, even the food!

I got 2 letters from you, and the mastersheets to the Concerts for Orch. The latter I returned with the corrections on Dec. 27. Yesterday, I got the questionnaire which you see here enclosed, with my answers.

It seems the ballet-business went to nothing, since I did not get any news about it.

The "For children" agreement conceived in the routine terms will not do. This is an exceptional case: e.g. I cannot give B. & H. "all the copyright-----in and for all countries", when I gave the rights (of the old edition, of course) to somebody else 35 years ago, at least for Europe. I think there should be used a different wording which will make it clear, that "for all countries" applies only for the differences between the original and the revised edition. Perhaps you may ask your lawyer how this should be done.--- I return enclosed one copy, you may introduce provisionally the necessary changes, send it to me for approval, and then make again 4 copies.

I got (yesterday) the statement concerning the Continental records share. So the situation is this:

I owe you \$30 in connection with this business
 \$100 because of the advance given me in Nov. 1943
 \$300 because of the advance given me in March 1943
 \$15 for the N. Y. Times advertisement.

445

You got a check from Mr. Bator, on my behalf (in Dec?) of \$125

445

-125

320

; therefore I still owe you (i.e. B. & H.) \$320

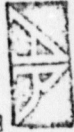
The Best and simplest would be to deduct this amount in March, when I will get the statement of royalties etc. for 1943.

It seems I will have no means to practise here; this Albemarle Inn (no "r" before "n") is very far from the centre of the town, and I see no possibilities for practising. Therefore, the Nashville engagement ought to be cancelled. Of course, no you steps should be made at Bloomington.

I am sending you my best wishes for the New Year, and am
yours, sincerely

Bela Bartok

EXHIBIT 9, Annexed to Foregoing Affidavit



ALROY RICHMOND presents

THIS SUN. AT 3:30—Jordan Hall

JOSEF SZIGET

(Ballroom Piano)

Celebrated Hungarian Violinist in program including first American performance of Prokofiev D major Sonata; Stradivarius Concerto; Cesar Franck Sonata; Stravinsky Duo Concertante; Harty Kaufman at the piano.

TUE. EVE., NOV. 28—Jordan Hall

ALEXANDER HODROVSKY

Russian pianist playing first performance of Prokofiev 2nd Sonata; Bach Chromatic Fantasy and Fugue; Rachmaninov Prelude in G major; Chopin "My Joy" and C-sharp minor Scherzo; Last Fox Follets and Etude Transcendante in F minor.

JEANETTE WOODWARD

Springfield Auditorium Sun. Aft., Nov. 26—Lowell Auditorium Fri. Eve., Dec. 1—Symphony Hall Wed. Eve., Nov. 29 (Completely sold out). (Ballroom Piano)

FRI. EVE., DEC. 8 AT 8:30—Jordan Hall

(Boston Symphony is out of town 1 week-end)

Boston Debut of the Notable Czech-Slovakian Pianist

FRIDOLIN HODROVSKY

Program lists Chopin B minor Sonata; Bach C minor Toccata; 1st Boston performance of Martinu Fantasy and Rondo; Mozart Variations; 4 pieces by Stravinsky.

SAT. EVE., DEC. 9 AT 8:30—Symphony Hall

(Use Nov. 12 tickets)

FRIDOLIN HODROVSKY

Leading Met. Opera Tenor (Ballroom Piano)

SUN. AFT., DEC. 10 AT 3:30—Jordan Hall

FRIDOLIN HODROVSKY

Mozart Quartet ("Lullaby") Quincy Porter Quartet No. 7; Schubert "Death and the Maiden"

SUN. AFT., DEC. 17 AT 3:30—Jordan Hall

PAUL SWEET

Only Boston recital eminent Polish Pianist; Schumann Fantasie; Brahms-Paganini Variations; Chopin 4th Ballade; C-sharp Waltz; 3rd Scherzo; etc., etc. (Ballroom Piano)

[394]

SIXTY-FOURTH SEASON • NINETEEN HUNDRED FORTY-FOUR AND FORTY-FIVE

Fifth Programme

FRIDAY AFTERNOON, DECEMBER 1, at 2:30 o'clock

SATURDAY EVENING, DECEMBER 2, at 8:30 o'clock

MOZART.....Overture to "Idomeneo, Re di Creta," K. 366

FRANCK.....Symphony in D minor

- I. Lento; allegro non troppo
- II. Allegretto
- III. Allegro non troppo

INTERMISSION

BAROK.....Concerto for Orchestra

- I. Andante non troppo; allegro vivace
- II. Allegro scherzando
- III. Elegy; Andante non troppo
- IV. Intermezzo intermedio; Allegretto
- V. Finale: Presto

(First Performance)

BALDWIN PIANO

This programme will end about 4:25 on Friday Afternoon
10:25 o'clock on Saturday Evening

Lectures on these programmes will be given in the Lecture Hall of the Boston Public Library on the Wednesdays preceding, at 4:45 o'clock. The first part of each programme will be broadcast on Saturday by the Blue Network under the sponsorship of the Allis Chalmers Manufacturing Company. There will be a "Boston Symphony Preview" on Station WHDH, each Thursday at 10:15 P.M.

[395]

EXHIBIT 10, Annexed to the Foregoing Affidavit

MUSIC

By RUDOLPH ELIE, JR. Symphony Concert

The Boston Symphony Orchestra, Serge Koussevitzky conducting, gave the eighth program in Symphony Hall yesterday afternoon, performing the following program:

Overture to "Idomeneo" (K 369).....Mozart
Concerto for Orchestra.....Bartok
Symphony in D minor.....Franck

It is hardly necessary at this point to remark on the strength of the musical personality disclosed by Bartok's music. His Orchestral Concerto, given yesterday for the first time, is a work which must rank as the composer's masterpiece, which is to say it must also rank among the musical masterpieces of recent years.

Despite its basic simplicity, it is a composition of great contemporary complexity and, for the most part, of typical Bartokian austerity and severity, and it was not charring the graceful, exquisite intermezzo taken readily to heart by yesterday's audience. This should not dismay Bartok, whose music has withheld its innermost secrets from the general public for years. And it is by no means clear, even today, that his day is coming, but I would hazard a guess that if this extraordinary composition were to be heard as often as Shostakovich's antiquated sensations, it would speak powerfully to the musical public.

The concerto is the product of a gloomy period in the composer's life. Bartok has not been well in recent months; nor has he been especially successful (if repeated performances are what make success). And when Dr. Koussevitzky through his music foundation approached him to commission this work, Bartok is said to have felt himself incapable of going through with the project. It may be reading things into the work which are not there, but the feeling of increasing optimism, of increasing strength and vigor is strongly conveyed in this work, and I have more than a suspicion that it is highly personal, even autobiographical music.

It begins with a phrase of gentle, luminous beauty which is soon carried away in a turbulent stream of conflicting rhythms and harmonies representing, perhaps, the composer's search for an idiom, his struggles to find, in clashing contemporary schools, his voice. There follow, in a series of movements, reminiscences of other schools, fragments of other styles (the fourth movement might have been by Smetana), and finally, as if in triumphant assertion that he had been on the right track all along, he brings his Concerto to an end in his own individual idiom. All this you understand, is pure speculative tawdler. It is simply what it might be and what it was

From a more musical approach, however, there is no denying the splendor of its harmonic network or the expressiveness of its melodic sensibilities. There is a nobility and a purity to the music—all the more apparent in contrast to the Franck orgy which followed—which is akin esthetically to Bach—and which speaks most clearly to those with their deepest musical roots in that prodigious fountain. The Concerto, by the way, is fearfully difficult, and every man in the orchestra, not to mention Dr. Koussevitzky, must be congratulated for their technical feat in the mere negotiation of the work, while conductor and orchestra cannot be praised enough for endowing it with such great musical feeling. The controversy came to the stage to acknowledge the applause, of which there was a heartening volume. Yes, if a composition of transcendent musical art may be defined as one which, in its own way, is a summation of all that has gone before, then the Orchestral Concerto is a work of art, and a great one.

MUSIC SYMPHONY HALL

Boston Symphony Orchestra
By CYRUS DURGIN

Overtures are not often found on Serge Koussevitzky's Boston Symphony programs. The regular concerts this week at Symphony Hall are an exception, for they begin with a Mozart Overture that is both lesser and lesser-known: that of "Idomeneo, King of Crete." The other numbers are Bela Bartok's "Concerto for Orchestra," given first performances, and the Cesar Franck Symphony in D minor.

Possessing neither the sparkle of the "Figaro" Overture nor the drama of that to "Don Giovanni," the "Idomeneo" represents the practical or virtue-by-necessity rather than the inspired side of Mozart. Yet it has its interests and is good to hear.

The conventional view of the music of Bela Bartok probably can be expressed thus: "It's awfully modern, don't you think? Full of dissonance and crazy rhythms and—well, you know—awfully modern. I may not know music, but I know what I—well, it's awfully modern."

Keeping this in mind, it must have been a pleasant surprise to many of the Friday subscribers to find that his Concerto for Orchestra is easy to take. The style is fairly light, the dissonance is expressive rather than idiomatic, and the five movements are, on the whole, engagingly emotional. And more than a few pieces seem to be in a joking mood.

The composer prefers to call his work a "Concerto" rather than a Symphony because he has treated some of the instruments in a "virtuoso" or "concerted" style. The point is not to be labored except by pedants. Call it a different sort of symphony and you arrive, not enough to the truth. The main point is that you find practically nothing of the harmonic incoherence or the rigorously intellectual patterns of prominent modernism whose previous music has earned him, among some people, the scorn of such words as "ard" and "eccentric."

The Friday audience seemed to like the Concerto and it applauded the short, white-haired composer when he appeared on the stage and bowed with grave shyness. So much new music is heard once or twice and then forgotten that I hope Mr. Bartok's Concerto will be a fortunate exception to the rule. Let's hear it again this season.

Yesterday's concert ended with a Koussevitzkyan reading of Franck's ubiquitous Symphony. This means that every crop of melodic juice and every ounce of passion was squeezed from the notes in a performance that made you sit bolt upright to listen now many times you have heard the Symphony at the concert hall or over the air. Yet there could have been more.

THE BOSTON DAILY GLOBE—SATURDAY, DECEMBER 2, 1944

EXHIBIT 11, Annexed to Foregoing Affidavit

Composer		Title		
Bartok		Concerto for Orchestra		
Movements				
I. Andante non troppo; allegro vivace				
II. Allegro scherzando				
III. Elogio: Andante non troppo				
IV. Danzando intermedio: Allegretto				
V. Finale: Andante				
PLACE	DATE	YEAR	CONDUCTOR	SOLOIST
Boston VII	12/1-2	1944	Leinsdorf	First performance
Boston XII	12/29-30	"	do.	
New York II	11/10-13	1945	do.	Sharp in New York
Boston XVI	3/24-25	1950	Burgin	
Boston XVII	4/11	"	do.	
Boston XVIII	2/18-9	1952	Unvermet	
Boston XIX	2/15	"	do.	
New York	2/14	"	do.	
Boston XX	4/1-2	1955	Burgin	
Boston XXI	7/22	1956	Meisinger	
Boston XXII	8/29	"	do.	
Boston XXIII	11/21-22	1958	Dorati	
Boston XXIV	11/23	"	"	
Providence II	11/25	"	"	
Boston XXV	3/17-18	1961	Schnippas	
Boston XXVI	3/21	1961	"	
Berk. Festival	8/10	1962	Ormandy	
Boston III	10/5-6	1962	Leinsdorf	
Cambridge I	10/9	"	"	
Boston Tues. 2	10/16	"	"	
Northampton	10/22	"	"	

03:00-7:25-38 13

BOSTON SYMPHONY ORCHESTRA

01-100-72520-38 13

PLACE	DATE	YEAR	CONDUCTOR	SOLOIST
New Haven	12/23	1962	Leinsdorf	
New York Phil. I	10/24	"	"	
Kansas City, Mo.	4/16	1963	"	
Oklahoma City	4/17	"	"	
San Diego	4/19	"	"	
San Francisco	4/22	"	"	
Seattle	4/24	"	"	
Winnipeg	4/26	"	"	
Berk. Fest.	7/26	"	"	
"	8/15	1965	"	
Boston III	10/15-16	1965	Leinsdorf	
Washington	10/26	"	"	
Phil. Hall, N.Y.	10/27	"	"	
Brooklyn I	10/28	"	"	
Phil. Hall, N.Y.	10/29	"	"	
Newark	10/30	"	"	
Providence I	11/4	"	"	
Boston XXIV	4/26-27	1968	"	
Berk. Fest.	7/20	"	"	
Tanglewood 8	5/23	1970	Ormandy	(1943)
Boston 17	2/12-13	1971	Leinsdorf	
Phil. Hall 4	2/17-19	"	"	
Tues 8 &	2/23	"	"	
Tanglewood 5	7/28	1972	Ormandy	

New York

Először is: megkaptuk rövidke leveldet, a gép megértéséről, aztán a hosszú leveldet, az elméltetéséről, és mindessel együtt a pályánap menüjét. Egyszerre kaptuk mindet (most: ^{először}).

Másodszor: nagy lehetünk volt, Bostonban voltunk a bostoni zenekar költségein. Az aggodalmaskodó Rappaport alig akart denegetni (!), de végre mégis beadták a derékát. Minden nagyon szépen ment, próbák, előadások; a zenekar-Koncertintézményvel együtt vitett magáért. Koncertintézmény lekövetelt a darabért, többet is kijelentette, hogy az utolsó 20-25 centes "legjelentékenyebb" zenekari műve. Amint márvoluké mondták nekem: "he is raving about the piece". Nov. 28.-án indulunk, Dec. 3. én érkezünk vissza. Nagy vigasztalás, nemsőt bosszú, ha kellett; gondolkodott ennyire-ról (!) [mert a hotel kivételesen jól volt, háborús körülmények között] Az időjárás a legvilágosabb módon volt kellemetlen, egyik nap esett az eső, aztán tavaszi esőszél, de erős szél fújt, végül fagyos ("equillio dollosos") szélvihar tombolt (az őri hurrikán "20 millió dolláros" volt, itt szél, eső, viharosság, sőt mind dollárban mérnek!). Ennek köszönhetően letünk a koncert

teremtől, mégis mindig tartani kellett oda. De néha
10 percig is eltartott, míg kocsit kaptam.

Koruss. valamikor 3-4 hét múlva még egyszer jött
a darabot Orontban, akkor rádióban közvetítették,
de ott nálunk ezt nyilván úgy sem lehet fogni.
Aston jan.-ban New Yorkban is fogja játszani.

A kisiparlott fényképet eszemel vimekildom
remélen, nem fogják megint máshova reklámozni!

Es astan lekona volt, az a pulykanapi!
Jelenkor mindig a regény magyar bakákra gon-
dolok. És a regény többi magyar! És a magyar
zoidok!! Talán ez a legutóbbi (múlt hét)
áttele a Dunántúlra valamennyire megenged-
te a rendelkezést. He Petőfi körüljárta, akkor
talán azok a bestia. Kitalálom, hogy az
még jóval előbb, ahogy belekerült a látható.
Hagy gondok csak mindenkinek!

Értekelte gondolatfűtővel a nagyszól mint
emlék felidőkről. Es már szinte Prut. Hased-i
elmélkedés (Prut csak a vásárlás legnagyobb fra-
cia irója). Es eszembe jutott Rodály. Hased-i
megjegyzés, ugyan nem nem, hanem fül-
benyomásokról. Északafrikában valódi verecs-
ket kaptak volna. Értekelte, és a többi. Értelme-
dőltek, valóban fűtők a dűnék. Hased-i
Rodály megállította a felvételét, azt mondta:

valószínűleg az egész életük során, mint a
vadászat, mint a természet, mint a természet.

Még egy "első" előadás volt: Menekül.
New Yorki nov. 26-i kongresszusán bemutatva
azt a hegedűn való zenét, azt amit
Ashville-ben írtam rá. Később a ját-
rólta.

azt a játékot "money order" megértés, be-
váltatam. - Jó, hogy végre tudok valamit az
ottani hőmérőskészletéről és használatáról. De a
csillagokról még nem írtam semmit sem. -
Köszönök dec. 7-én lett és megértés dec. 4-én
jelölt bevétele. Az új.

Egyesekről

Apas

Ede Pter,

Apas egy név, rendszeresen megírt mindent, hogy
már nem jön tudni más mint az, hogy
még mindig volt mind a két oldal és egy körülmé-
nyes; külön egy élmény K. megértés, hogy
hogy a dolgok a probáció, hogy a megértés Apas
minden állapota megértés és a rendszer
megértés lett volt. És hogy megértés
volt, hogy jól megértés az összes előadások
egy-e volt nem is kell tudni más. Apas egyen-
még volt elgondol! -

Peterkin, mit értesz?

Ölöl-erővel Angol

DELA BARTOK

309 W 57

New York 19, N.Y.

TO GET A LETTER - WRITE A LETTER - VIA AIR MAIL



AIR MAIL

Peter BARTOK

U.S. Naval Station

Navy #1555 (one-nine-five-five) Box 8

c/o F. P. O. New York, N.Y.

(Translation from Hungarian original)*

(From) Bela Bartok*
309 West 57
New York 19, N. Y.

(To) Peter BARTOK,
U. S. Naval Station
Navy # 1955 (one-nine-five-five) Box 8
c/o F. P. O. New York, N. Y.

New York, December 5, 1944

Dear Peter,

First of all: we received your little short letter about the instrument's arrival; then your longer letter containing the contemplations and together with all this the turkey-day menu. We received all this together and after a delay, because:

Second: we had a great week, we were in Boston, at the Boston orchestra's expense. The worrisome Rappaport was hardly willing to let me go (!), but in the end he gave in after all. Everything went very well, rehearsals, performances; both the orchestra as well as Koussevitzky outdid themselves. Koussevitzky is enthusiastic about the piece, several times he declared it to be the most significant orchestral work of the last 20 - 25 years. As someone else told me: "he is raving about the piece".* We left on November 28 and returned on December 3. Your mother looked after me, obtained taxis when needed; purchased food (!) /because there appeared significant war-time shortcomings in the hotel's service/. The weather was unpleasant in the greatest variety of ways, one day rain poured, then there were winds of spring-like mildness but strong, finally there was a freezing ("one-million dollar") windstorm (last fall's hurricane was of "20-million dollar magnitude"; over here wind, disaster, success, are all measured in terms of dollars!). We were staying practically a stone's throw

*Excepting the addresses and phrases marked with *, which appeared in English in the original letter.

from the concert-hall, but even so we had to go there by taxi. But it took sometimes 10 minutes until we got one.

Kouss. will again play the piece in Boston 3- 4 weeks from now, on that occasion it will be broadcast over the radio also; but where you are it probably will not be possible to receive it anyway. Then in January he will perform it in New York.

The wrongly-channelled photographs are being returned enclosed I hope they will not again channel them wrongly somewhere else.

So this was quite a feast, the one on turkey-day! On such occasions I always think of the poor Hungarian recruits. And the other poor Hungarians! And the Hungarian Jews!! Perhaps this latest (last week's) crossing of the Danube will mitigate the danger somewhat. If Pest became surrounded, perhaps then those beasts would get out of there sooner, so as not to get caught in the net. These are grave worries for everyone!

Your train of thoughts about smells as memory-clues interested me. This was already a Marcel Proust-like contemplation (Proust is the greatest French writer of this century). And I recalled a remark of Zoltan Kodaly, although not about nose-, but ear-impressions. In Northern Africa real negroes were brought to me. They sang, yelled, stamped their feet, beat their drums, blew their little bagpipes wildly. When Kodaly heard the recordings, said he: well, these bring to life before us those primitive people much more than any kind of photograph would.

There was another "first" performance: at his recital on November 26 in New York Menuhin introduced my solo violin sonata, the piece I wrote for him while in Asheville. He played it excellent.

The corrected "money order"* arrived, I cashed it. --- I am glad to finally have learned something about temperature and similar con-

ditions there. But you have not yet written anything about the stars. ---
 Meanwhile it became December 7th and the letter you mailed on December 4
 also arrived. A good harvest.

Love,

Father.

Dear Peter, **

Your father wrote about everything in so much detail and nicely
 that I can hardly add anything but that both performances were beautiful and
 there was a big audience-success; K.'s attitude was an extra special
 experience, how he worked at the rehearsals, how he sought to realize
 all of your father's concepts, and how enthusiastic the orchestra was.
 And, I hope I need not even mention it to you how important it was that our
 journey and the performances should go well. Your father was completely
 satisfied! ---

Dear Peter, when will you come?!

Love,

Mother.

** The balance of the letter is not by Bela Bartok.

590	650	950	1050	1150	1260	1510
-----	-----	-----	------	------	------	------

- 1:00 WBZ—Indianapolis Symphony.
 WBZ—News.
 3:15 WBZ—Help Wanted.
 WBZ—News.
 3:30 WBZ—Melody in the Sky.
 WBZ—Country Jamboree.
 WBZ—News. Hallroom.
 3:45 WBZ—Orange Bowl Preview.
 WBZ—Consumer Time.
 WBZ—Follies, Evelyn Howe, MC.
 WBZ—Larry Clinton's Music.
 4:15 WBZ—Adventure in Research.
 WBZ—Dolly Dawn's Music.
 4:25 WBZ—News.
 4:30 WBZ—Music on Display.
 WBZ—Assignment Home.
 WBZ—Green Grays Music.
 WBZ—News. Hallroom.
 4:45 WBZ—Phil Spector.
 WBZ—Earl Hines Music.
 WBZ—920 Club.
 4:50 WBZ—Grand Hotel sketch.
 WBZ—Philadelphia Orchestra.
 WBZ—Spoke Jones Music.
 WBZ—News. 920 Club.
 4:55 WBZ—Hal Mott's Music.
 5:15 WBZ—John Van Doren's news.
 WNAC—The Sports Parade.
 WDDH—Josef Suk's Concert Or-
 chestra.
 WBZ—Artie Shaw's Music.
 WBZ—News.
 5:45 WBZ—Starting Curt Massey.
 WNAC—Musical Roundup.
 WDDH—Helen Sweetheart, 1962.
 WBZ—News.
 WBZ—Stock Market.
 6:00 WBZ—WNAC WBZ News.
 WBZ—WOP Time.
 WBZ—WOP Sports Results.
 WBZ—Geoffrey Harwood, news.
 WBZ—Moment Musical.
 6:15 WBZ—Bump Hadley, sports.
 WNAC—Direct of the Air.
 WBZ—People's Platform.
 WDDH—News.
 WBZ—News.
 6:20 WBZ—Sports Show.
 6:25 WNAC—Washington Snapshots.
 6:30 WBZ—Symphony of Melody.
 WNAC—The Answer Man.
 WDDH—Soldiers with Wings.
 WBZ—March to Victory.
 WBZ—Quartermaster Time.
 6:45 WBZ—Service Unlimited.
 WNAC—Musical Rendezvous.
 WBZ—World Today.
 WBZ—Frank Fallon, sports.
 WBZ—Hallroom.
 6:55 WBZ—News.
 7:00 WBZ—World's Great Novels.

AIR ATTRACTIONS

Evening

- PEOPLE'S PLATFORM: Preview of
 1945. Wm. L. Slater, Quincy Howe, Bill
 Henry, Paul White, Mai George F. Eliot.
 WBZ 8:15.
 GREAT NOVELS: "Pickwick Papers."
 Part 3. Katherine Anne Porter, guest
 commentator. WBZ 7.
 AMERICAN EAGLE IN BRITAIN:
 WNAC 7.
 LIONEL BARRYMORE in "Mayor of
 the Town." sketch. WBZ 7.
 FILLY QUEEN DRAMA: "The Inner
 Circle." WBZ 7:30.
 MEET YOUR NAVY: WDDH 7:30.
 GAZELIGHT GAZETTES with Beatrice
 Kay, Michael O'Brien, Sally Sweetland.
 WBZ 8.
 KENNY DARTER SHOW: Nora Martin
 guest singer. WBZ 8.
 EARLY AMERICAN Dance Music.
 WDDH 8.
 COTTON BOWL PREVIEW: WNAC.
 8:15.
 TRUTH OR CONSEQUENCES. Ralph
 Edwards, MC. WBZ 8:30.
 DETROIT SYMPHONY ORCHESTRA.
 Karl Krueger conducting. WNAC 8:30.
 TRIN PEACE AND WAR. WBZ 8:30.
 BOSTON SYMPHONY ORCHESTRA.
 Dr. Serge Koussevitzky. Premiere. Paul
 Bartok's Concerto for Orchestra.
 WDDH 8:30.
 YOUR HIT PARADE: Frank Sinatra.
 songs. WBZ 9.
 CAN YOU TOP THIS? WBZ 9:30.
 BASKET-BALL GAME: St. Johns vs.
 Dartmouth. WOP 9:45.
 BARRY WOOD-Paul Kelly Show:
 Akira Yamitrou guest. WBZ 10.
 CHICAGO THEATRE: "The Bell of
 New York." WNAC 10.
 GUY LOMBARD's Orchestra in hit
 tunes of the year. WDDH 10:30.
 HOCKEY GAME: Olympics vs Philadel-
 phia. WDDH 10.
 AL FRANK SHOW: WBZ 10:15.
 GRAND OLD OPERA. WBZ 10:30.
 HARRY MARSHALL: "Man Called

EXHIBIT 14, Annexed to Foregoing Affidavit

[illegible][illegible]

[illegible]

EXHIBIT 15, Annexed to Foregoing Affidavit

THE NEW YORK TIMES, THURSDAY, JANUARY 11, 1915

BARTOK CONCERTO
INTRODUCED HEREBoston Symphony, Directed by
Koussevitzky, Plays New
Work at Carnegie Hall

By GUN DOWNES

Dr. Koussevitzky, on occasion is a bold but by no means tactless program maker. He introduced a new "Concerto for Orchestra" in the modern vein by Bela Bartok at the concert of the Boston Symphony Orchestra last night in Carnegie Hall. He prefaced this more or less problematic score by the solid and familiar of the late prelude with which Mussorgsky prefaced the opening scene of his opera, "Khovanshchina," and he followed it with the familiar and justly popular epic of Brahms' third, G major symphony.

The Concerto, given its premiere in Boston last fall, was written for the Koussevitzky Foundation, established in memory of Nathan Koussevitzky. It shared between Mussorgsky and Brahms, it had a very cordial reception.

This was due in the first place to the fact that the score is by no means the most to crack that other of Bartok's late works have offered. It is a wide departure from the author's earlier and more cerebral style. There is not even the suggestion of an artist of less sincerity than this one, that he had adopted a simpler and more melodic manner with the intention of an appeal to a wider public.

A Courageous Composer

But that would not be Mr. Bartok's motive. Nor would the emotional sequence of this music, and the ease with which it has evidently been fastened, support such an assumption. What is evident is the courage, when this composer never has wavered, with which he is striking out in his late works in new directions. The style is less lyrical and more daring than we have hitherto known of Bartok's late music, to be said it is written in a large measure the note cast of isolated thought which has brooded over so many of his pieces.

In sum, as he himself has stated, it is an experience from the possession which must not be easily forgiven, as it has so many leading artists of today, who are all of them European. And all these are in the modern world.

The score is called a "Concerto," meaning a work cast in the eighteenth century rather than the nineteenth century mold with of course, some contemporary touches. This is not a piece for a solo and orchestra. It is a work of movements in the style of a symphony, but with an orchestra. There are six movements of the classic symphony in the structure, only two of its parts are in the key of G major, the rest are in different keys. Each is in a different key, and different in form, from the others. They are subjective in feeling.

Character of Music

The important point in the character of the music. It begins with a number of preludes, the first in the low strings, several times repeated with a sort of miracle of reflection of itself in harmonies of the upper strings. Mr. Bartok says that the second movement is a lament, a bitter one—and the third a lamentation. There are references in the fourth movement to the first and then, as a contrast and entertaining contrast, a young, working finale in Hungarian style. Given there is the suggestion of dance rhythms and of the character of folk songs—a "happy" and resolute ending.

Character of Music

Is this a temporary diversion from the road Bartok so persistently has traveled? Is the tendency more than a deep, or its faint, "resting value"? The answer is that it is a diversion, but a diversion that is not a diversion. Bartok has recently written, Mr. Koussevitzky did him a service by his performance. It was a work of extraordinary skill and originality. There were some points where the work is strong and it is so many different, when the whole work is, really and in fact, a masterpiece of originality. The work is a masterpiece of originality. The work is a masterpiece of originality. The work is a masterpiece of originality.

Is this a temporary diversion from the road Bartok so persistently has traveled? Is the tendency more than a deep, or its faint, "resting value"? The answer is that it is a diversion, but a diversion that is not a diversion. Bartok has recently written, Mr. Koussevitzky did him a service by his performance. It was a work of extraordinary skill and originality. There were some points where the work is strong and it is so many different, when the whole work is, really and in fact, a masterpiece of originality. The work is a masterpiece of originality. The work is a masterpiece of originality. The work is a masterpiece of originality.

The important point in the character of the music. It begins with a number of preludes, the first in the low strings, several times repeated with a sort of miracle of reflection of itself in harmonies of the upper strings. Mr. Bartok says that the second movement is a lament, a bitter one—and the third a lamentation. There are references in the fourth movement to the first and then, as a contrast and entertaining contrast, a young, working finale in Hungarian style. Given there is the suggestion of dance rhythms and of the character of folk songs—a "happy" and resolute ending.

EXHIBIT 16, Annexed to Foregoing Affidavit

THE NEW YORK TIMES, SUNDAY, JANUARY 14, 1945

BOSTON SYMPHONY
WINS AN OVATIONKoussevitzky's Readings of
Corelli Excerpts, Sibelius'
Work Receive Praise

At its concert yesterday afternoon in Carnegie Hall the Boston Symphony performed two works which had not been presented on its program in 33 years—last night in the same auditorium. These were the Second symphony of Sibelius and Ildebrando Pizzetti's arrangement for string orchestra of a Sarabande, a Gigue and a Bachienne chosen from the violin sonatas forming the Opus 5 of Corelli. The list was completed by a repetition of Béla Bartók Concerto for Orchestra, which received its New York premiere at the previous concert.

In the Corelli excerpts the strings played with their incomparable beauty and quantity of tone, and thereby enhanced to the utmost the inherent melodic charm of the three delightful pieces, each of which was highly contrasted with the others and yet never overstepped the bounds of classic restraint.

The brooding Sarabande was delivered in tones of remarkable softness and purity of texture and was a constant joy to the ear from the delicately intimated phrases at the start to the richly resonant climax at the close, being filled with deftly treated trances throughout and the subtlest of carefully built-up crescendos. The Gigue was projected in full-bodied, resonant tones without the rhythmic alacrity and vivacity needed to evoke its exuberant content. By way of sharp differentiation came the happy start of Padriente in which the torrential melody of the Violins and the pizzicato accompaniment of the rest of the strings were balanced in a surprisingly delicate fashion.

The same perfection reached by the Corelli excerpts by the strings

The same perfection reached by the strings in the Sibelius was evidenced by all the sections of the orchestra in the performance of the second symphony of Sibelius, a perfect example of that moment of a perfected creation for Mr. Koussevitzky and his men by its pronounced eloquence and intensity.

It was played in all of the four movements with the opulence of sound and wealth of pragmatic lines needed to lend the music its essential quality. Mr. Koussevitzky's masterly interpretation of the symphony is too familiar to require detailed account. The finale, however, was taken at a somewhat more deliberate pace than the conductor has sometimes employed for this division of the work, resulting in a particularly noble and impressive presentation of the movement. In any event could be found with the presentation, it was that there were passages for the pizzicato accompanying the violas which were not clearly audible in the wide spaces of the 21st century, and this was again true of the repeated flutes for the movement leading to the end of the concert.

Mr. Bartók's Concerto for Orchestra, recently reviewed in these columns met with a demonstration of approval that he estimated many bows from the orchestra.

N. B.

EXHIBIT 17, Annexed to Foregoing Affidavit

OFFICE OF THE
REGISTER OF COPYRIGHTS

MBS:erl

COPYRIGHT OFFICE
THE LIBRARY OF CONGRESS
WASHINGTON 25, D. C.

SEP 12 1963

Rosen, Seton & Sarbin
15 West 44th Street
New York 36, New York

Attention: Gustave J. Rosen, Esq.

Dear Mr. Rosen:

This will acknowledge receipt of your letter of July 16, 1963. The following search report is made:

This search has been limited to the records of the Copyright Office. The indexes of the Copyright Office do not contain analytics as to the individual contents of collections, therefore, if there are works by Bela Bartok first published in collections, this report cannot be considered to include a report of such works. Upon receipt of information concerning any such collections, such as title, name of compiler, and name of copyright claimant, a further search will be made.

Search in the indexes and catalogs of the Copyright Office covering the period 1898 through June 7, 1963 under the name Bela Bartok disclosed only the following separate registrations for works under this name.

ACHTZEHN DUOS; aus Vierundvierzig Duos für 2 Violinen, für 2 Violoncelli, music by Bela Bartok, bearb. von Walter Kurz. Score. (Universal Edition, Nr. 12850). Appl. author: Boosey & Hawkes, Inc. New matter: arr. Registered in the name of Boosey & Hawkes, Inc., under E pub. 132087, following publication Oct. 23, 1958.

ALBUM OF SELECTED PIECES FOR THE PIANO; by Bela Bartok, compiled by Katherine K. Davis. (Concord series 606). Registered in the name of E. C. Schirmer Music Co., under E pub. 10917, following publication Sept. 16, 1929. Renewed under E 195297, July 10, 1957 by Katherine K. Davis, as author of compilation.

Rosen, Seton & Sarbin

CONCERTO; for orchestra. Music by Bela Bartok.
Registered in the name of Hawkes & Son, Ltd., under
E for. 1261, following publication March 20, 1946.
Score: Orchestra.

CONCERTO; by Bela Bartok. Op. posth. Prepared
for publication from the composer's original ms., by
Tibor Serly, the viola part edited by William Primrose.
Registered in the name of Boosey & Hawkes, Ltd., under
E pub. 42566, following publication Dec. 2, 1949.
Copyright is claimed on Score (viola and piano) and
part.

CONCERTO; for violoncello & orchestra, adaptation
of the viola concerto, music by Bela Bartok, prepared
for publication by Tibor Serly. Part. New matter:
adaptation. Registered in the name of Boosey & Hawkes,
Inc., under E pub. 105733, following publication Nov. 20,
1956.

CONCERTO FOR VIOLA AND ORCHESTRA, by Bela Bartok,
op. posth., prepared for publication from the composer's
original ms. by Tibor Serly. Full score. Registered in
the name of Boosey & Hawkes, Inc., London, under E pub.
48765, following publication Aug. 18, 1950.

CONTRASTS. (For violin, clarinet and pianoforte)
(B. Ens. 49) (1. VERBUNKOS. 2. PIHENO. 3. SEBES)
Music by Bela Bartok. Registered in the name of Hawkes
& Son (London), Ltd., under E pub. 106684, following
publication July 31, 1942.

DANZA DELL' ORSO, by Bela Bartok, riduzione per
piccola orchestra di Egon Kemeny. (Bear dance. Medvetanc)
(Piano-conductor score and parts). Registered in the name
of Edizioni Suvini Zerboni, under E for. 0-6310, following
publication Dec. 1, 1950.

II EME QUATOUR; von Bela Bartok, op. 17; 2 violinen,
viola und violoncell. Partitur. (Universal edition,
no. 6371. Cover title: II. STREICHQUARTETT) Registered
in the name of Universal Edition, under E 545453, following
publication June 4, 1920. Renewed under R 32165, March 17,
1948, by Ditta Bartok, as widow.

Rosen, Seton & Sarbin

SONATA; by Benedetto Marcello; transcribed by Bela Bartok; pf., in B flat major. Registered in the name of Carl Fischer, Inc., under E pub. 18554, following publication Oct. 9, 1930. Renewed under R 221069, Sept. 8, 1958, by Peter Bartok, as child.

SONATA. For two pianos and percussion. (Hawkes pocket scores, no. 51) (6675) Music by Bela Bartok. Registered in the name of Hawkes & Son (London) Ltd., under E for. 67655; following publication Nov. 25, 1942.

SONATA FOR SOLO VIOLIN, by Bela Bartok, edited by Yehudi Menuhin. Registered in the name of Hawkes & Son (London) Ltd., under E for. 7557, following publication Dec. 12, 1947.

SONATE; von B. Bartok, pf. Registered in the name of Universal-Edition, A. G., under E 668359, following publication Apr. 25, 1927. Renewed under R 130276, May 11, 1954, by Edith Pasztorney (sic) Bartok, as widow.

SONATINE; sur des themes paysans de Transylvanie, par Bela Bartok, transcription par Endre Gertler; violon et pf. Registered in the name of Rozsavolgyi & Co., under E for. 35715, following publication Oct. 6, 1933. Renewed under R 263703, Oct. 7, 1960, by Edith Pasztory Bartok, as widow and Peter Bartok and Bela Bartok, as children.

SPRING. Old Hungarian poem. (Winthrop Rogers edition). (H. 15342) New matter: arrangement for S.S.C. unaccompanied with English translation). Music and arrangement by Bela Bartok, English translation by Nancy Bush. Registered in the name of Hawkes & Son (London), Ltd., under E for. 66630, following publication March 20, 1942.

SPRING. Music by Bela Bartok. For 3-part female chorus, S.S.A., old Hungarian poem, English translation by Nancy Bush. Fruhling, altungarisches Volkslied, deutsche Ubertragung von Ernst Roth. (n.p.) Score (7 p.) 7d. New matter: German text. Registered in the name of Hawkes & Son (London) Ltd., under E for. 0-35444, following publication May 20, 1955.

- 33 -

Rosen, Seton & Sarbin

TEN EASY PIECES; for piano, by Bela Bartok, edited with special annotations by Denes Agay. Registered in the name of Leeds Music Corp., under E pub. 44323, following publication Feb. 14, 1950. Copyright is claimed on foreword, editing and special annotations.

3RD PIANO CONCERTO, by Bela Bartok. Registered in the name of Boosey & Hawkes, Ltd., under E for. 4993, following publication Feb. 13, 1947. Miniature score.

3RD PIANO CONCERTO; by Bela Bartok, reduction for two pianos, four hands by Matyas Seiber. Registered in the name of Hawkes & Son, (London), Ltd., under E for. 5800, following publication July 18, 1947. Copyright is claimed on arrangement. Score: piano 1-2.

3 BURLIQUE POUR LE PIANO. Par Bela Bartok. Op. 8 Registered in the name of Rozsavolgyi and Co., under E 303689, following publication Oct. 16, 1912. No renewal found.

TIZENHARON KONNYU KIS ZONGORADARAB; by Bach, Notenbuchlein für Anna Magdalena Bach című nébold, eloadási jelekkel, újrenddel és jegyzetekkel ellátta; Bartok. Thirteen small piano pieces. For piano. 5.-Ft. Registered in the name of Zenenukiado N. V., under E for. 0-7154, following publication Oct. 10, 1950.

TOCCATA; by Girolamo Frescobaldi, transcribed by Bela Bartok, pf., in G major. Registered in the name of Carl Fischer, Inc., under E pub. 18555, following publication Oct. 9, 1930. Renewed under R 221073, Sept. 8, 1958, by Peter Bartok, as child.

TOCCATA; by Michelangelo Rossi, transcribed by Bela Bartok, pf., in A min. Registered in the name of Carl Fischer, Inc., under E pub. 18556, following publication Oct. 9, 1930. Renewed under R 221074, Sept. 8, 1958, by Peter Bartok, as child.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

PETER BARTOK,	:	
	:	STATEMENT PURSUANT
Plaintiff,	:	TO RULE 9(g) OF
	:	<u>THE GENERAL RULES</u>
-against-	:	
	:	73 Civ. 4570 (R.O.)
BOOSEY & HAWKES INC. and	:	
BENJAMIN SUCHOFF, as Trustee	:	
of the Estate of Bela Bartok,	:	
	:	
Defendants.	:	

-----X

Plaintiff, Peter Bartok, pursuant to Rule 9(g) of the General Rules of this Court, submits the following statement of material facts as to which plaintiff contends there is no genuine issue to be tried:

1. Plaintiff is a natural born son of the composer Bela Bartok. (Admitted, Boosey & Hawkes Answer; Suchoff Answer).
2. Bela Bartok, during his lifetime, was a citizen of Hungary and one of the world's foremost composers of musical compositions.. (Admitted, Boosey & Hawkes Answer; Suchoff Answer).
3. Defendant Boosey & Hawkes, Inc. is a New York corporation, which maintains its principal place of business at 30 West 57th Street, New York, N.Y., and, at all times relevant herein, engaged in the business of publishing musical compositions. (Admitted, Boosey & Hawkes Answer; Suchoff Answer).

4. Defendant Benjamin Suchoff is presently Trustee of the Estate of Bela Bartok. (Admitted, Boosey & Hawkes Answer; Suchoff Answer).

5. On March 20, 1974, the original U.S. copyright term for Bartok's "CONCERTO FOR ORCHESTRA" (hereinafter the "Concerto") will expire. (Admitted, Boosey & Hawkes Answer; Suchoff Answer).

6. On March 21, 1973, plaintiff filed an application with the Copyright Office to claim the renewal copyright in the Concerto in his capacity as "child of the author". (Admitted, Boosey & Hawkes Answer; See Exh. 1 to Bartok Affid. dated April 29, 1974).

7. On March 22, 1973, defendant Boosey & Hawkes, Inc. filed an adverse claim with the Copyright Office to secure the renewal copyright in the Concerto in its own name as the "proprietor of a posthumous work". (Admitted, Boosey & Hawkes Answer; See Exh. 2 to Bartok Affid. dated April 29, 1974).

8. The Copyright Office has accepted both applications pending a judicial determination of the rights of the respective parties (Admitted, Boosey & Hawkes Answer, paragraph FIRST), and has advised plaintiff that all administrative remedies for resolution of this conflict have been exhausted. (See Exh. 3 to Bartok Affid. dated April 29, 1974).

9. On May 25, 1939, Bela Bartok entered into an agreement with Boosey & Hawkes, Ltd., the parent company of the

defendant in this action, which granted Boosey & Hawkes, Ltd., or one of its wholly-owned subsidiaries, the exclusive right to publish the works of Bela Bartok which were then ready for publication or which would be completed during the contractual period, subject to the payment of royalties. The agreement further provided that the publisher was to commence production of an edition for publication not later than two months after receipt of a submitted manuscript and that publication was to be completed within four months thereafter, barring circumstances beyond the publisher's control. (Admitted, Boosey & Hawkes Answer; Suchoff Answer; See Exh. 3 to Bartok Affid. dated April 29, 1974).

10. On October 8, 1943, Bela Bartok completed composition of the Concerto (Admitted, Boosey & Hawkes Answer; Suchoff Answer; See Exh. 5 to Bartok Affid. dated April 29, 1974), a work commissioned earlier in that year by The Koussevitsky Music Foundation, Inc. See Exh. 6 to Bartok Affid. dated April 29, 1974).

11. On November 25, 1943, pursuant to his obligations under the terms of the 1939 Agreement, referred to in paragraph 9 hereof, Bela Bartok executed an assignment to Hawkes & Son, Ltd., a wholly-owned subsidiary of Boosey & Hawkes, Ltd., of all his ownership rights in the Concerto. (Admitted, Boosey & Hawkes Answer; Suchoff Answer; See Exh. 7 to Bartok Affid. dated April 29, 1974).

12. On or before December 27, 1943, Bela Bartok submitted to defendant Boosey & Hawkes, Inc. a corrected manuscript of the Concerto. (See Exh. 8 to Bartok Affid. dated April 29, 1974).

13. In November, 1944, Bela Bartok travelled to Boston, Massachusetts to attend personally the rehearsals and the December 1, 1944 premiere performance of the Concerto by the Boston Symphony Orchestra at Symphony Hall. (Admitted, Boosey & Hawkes Answer; See Exh. 10 to Bartok Affid. dated April 29, 1974).

14. The Concerto was performed as scheduled on December 1, 1944 (Admitted, Boosey & Hawkes Answer; Limited Admission, Suchoff Answer, paragraph 5; See Exh. 9 to Bartok Affid. dated April 29, 1974) and was reviewed in the December 2, 1944 editions of the Boston Herald and the Boston Daily Globe. (Admitted, Boosey & Hawkes Answer; Suchoff Answer; See Exh. 10 to Bartok Affid. dated April 29, 1974).

15. At the conclusion of the December 1, 1944 premiere performance, Bela Bartok was escorted to the stage to receive the public's acclaim. (See Boston Daily Globe review of December 2, 1944, annexed as Exh. 10 to Bartok Affid. dated April 29, 1974).

16. The Boston Symphony Orchestra repeated its public performance of the Concerto in Boston, Massachusetts on December 2, 29 and 30 of that same year, only the first of which was personally attended by the composer. (Admitted, Boosey & Hawkes

Answer, Suchoff Answer; See Exhs. 11 and 12 to Bartok Affid. dated April 29, 1974).

17. The Boston Symphony Orchestra's December 30, 1944 performance of the Concerto was broadcast live on WHDH radio in Boston and on WJZ radio in New York. (Admitted, Boosey & Hawkes Answer; See Exhs. 13 and 14 to Bartok Affid. dated April 29, 1974).

18. On January 10 and 13, 1945, The Boston Symphony Orchestra gave its debut performances of the Concerto at Carnegie Hall in New York. (Admitted, Boosey & Hawkes Answer; Limited Admission, Suchoff Answer, paragraph 5; See Exh. 11 to Bartok Affid. dated April 29, 1974).

19. Bela Bartok attended the January 10 and 13, 1945 performances at Carnegie Hall (Admitted, Boosey & Hawkes Answer; Limited Admission, Suchoff Answer), and on both occasions personally acknowledged the public's tribute. (See Exhs. 15 and 16 to Bartok Affid. dated April 29, 1974).

20. The Boston Symphony Orchestra's January 10 and 13, 1945 performances of the Concerto at Carnegie Hall were reviewed in the January 11 and 14, 1945 editions of The New York Times. (Admitted, Boosey & Hawkes Answer; Limited Admission, Suchoff Answer, paragraph 5; See Exhs. 15 and 16 to Bartok Affid. dated April 29, 1974).

21. Following completion of the Concerto, Bela Bartok composed his "Sonata for Solo Violin" (completed March 14, 1944), a song titled "The Husband's Grief" (completed February, 1945),

his "Concerto No. 3 for Piano and Orchestra" (finished at the time of his death, except for the orchestration of the last 17 measures), and his "Viola Concerto" (unfinished, except for the complete sketches), only the last of which was originally registered by Boosey & Hawkes as a "posthumous" work. (See Bartok Affid., paragraph 16, dated April 29, 1974).

22. On September 26, 1945, Bela Bartok died. (Admitted, Boosey & Hawkes Answer; Suchoff Answer).

23. On March 20, 1946, Boosey & Hawkes issued the first edition of the Concerto's printed score with statutory copyright notice. (Admitted, Boosey & Hawkes Answer; Suchoff Answer).

Dated: New York, New York
April 30, 1974

Respectfully submitted,

ORENSTEIN, ARROW, SILVERMAN &
PARCHEP, P.C.
Attorneys for Plaintiff
1370 Avenue of the Americas
New York, New York 10019

By: Peter A. Herbert

PETER A. HERBERT
Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BARTOK,

Plaintiff,

-against-

BOOSEY & HAWKES INC. and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants.

CROSS-MOTION OF
DEPENDANT, BOOSEY &
HAWKES INC.

73 Civ. 4570 (R.O.)

S I R S :

PLEASE TAKE NOTICE that the defendant, BOOSEY & HAWKES INC., pursuant to Rule 56 of the Federal Rules of Civil Procedure, will cross-move this Court on the hearing of plaintiff's motion for summary judgment, on the 24th day of May, 1974, before the Hon. Richard Owen, in Room 905, United States Courthouse, Foley Square, New York, New York, at 2:15 P.M., or as soon thereafter as counsel may be heard, for an order granting summary judgment in the above entitled action in favor of the defendant, BOOSEY & HAWKES INC., as prayed for in its answer, and for such other relief as this Court may deem just and proper.

Dated: New York, New York,
May 1, 1974.

Yours, etc.,

FISHBEIN & OKUN
Attorneys for Defendant,
Boosey & Hawkes Inc.
609 Fifth Avenue
New York, New York 10017
PL 2-3770

BY

Maxwell Okun
Maxwell Okun - Of Counsel

TO: ORENSTEIN, ARROW,
SILVERMAN & PARCHER, P.C.
Attorneys for Plaintiff
1370 Avenue of the Americas
New York, N.Y. 10019

WOLF, POPPER, ROSS, WOLF & JONES, ESQS.
Attorneys for Defendant, Benjamin Suchoff
345 Third Avenue
New York, N.Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BARTOK,

Plaintiff,

-against-

BOOSEY & HAWKES INC. and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants.

-X

:

:

:

:

:

:

AFFIDAVIT IN SUPPORT OF
BOOSEY & HAWKES' CROSS-
MOTION FOR SUMMARY
JUDGMENT.

73 Civ. 4570 (R.O.)

-X

STATE OF NEW YORK)
COUNTY OF NEW YORK)SS:

W. STUART POPE, being duly sworn, deposes and says:

I am the Vice-President of the defendant, BOOSEY &
HAWKES INC.

This affidavit is submitted in support of BOOSEY &
HAWKES' cross-motion for summary judgment, and in connection with
plaintiff's motion for summary judgment.

The plaintiff, PETER BARTOK, is the son of Bela Bartok,
the composer. Bela Bartok died on September 26, 1945. At the
time of his death, he was survived by his widow, Edith Pasztory
Bartok, his son Bela Bartok, and his son Peter Bartok, the
plaintiff herein, all of whom are now living.

Prior to his death, Bela Bartok composed a musical work
entitled "CONCERTO FOR ORCHESTRA". BOOSEY & HAWKES, as publisher,
acquired all of the rights in the said musical work, including
the U.S. renewal copyright, under an agreement and an assignment
executed by the decedent on May 25, 1939 and November 25, 1943.
respectively. (Exs. 4 and 7 annexed to Plaintiff's affidavit.)

The musical work was published by Hawkes & Son (London) Ltd. of London, BOOSEY & HAWKES' affiliate, on March 20, 1946, with a proper notice of copyright. At the time of such publication, the composer, Bela Bartok, was deceased. A certificate of copyright registration, Class E For. No. 1281, was duly issued on April 10, 1946 to Hawkes & Son, reciting the fact that the composer was deceased. A copy of said certificate is annexed hereto as EXHIBIT I.

A certificate of registration of a claim to renewal copyright with respect to said musical work, has been duly issued to BOOSEY & HAWKES' affiliate, as proprietor of copyright in a posthumous work. (Ex. 2 annexed to Plaintiff's affidavit.)

A posthumous work is defined by the Copyright Office as a "work first published and copyrighted after the death of the author". (See Paragraph B1. under "WHO MAY CLAIM RENEWAL", which appears on the back of the renewal certificate.)

The plaintiff admits that prior to the commencement of this action, he assigned to BOOSEY & HAWKES INC. his rights in the U.S. renewal term of copyright in the musical work "CONCERTO FOR ORCHESTRA", subject to the payment of royalties to those who are legally entitled thereto.

The defendant, SUCHOFF, admits that prior to the commencement of this action, Victor Bator and Julius G. Baron, as Executors under the Last Will and Testament of Bela Bartok, Deceased (the predecessors in interest of defendant, SUCHOFF, as Trustee) asigned to BOOSEY & HAWKES INC. all their rights, if any, in the United States renewal term of copyright in the said musical work, subject to the payment of royalties to those

who are legally entitled thereto.

The said assignments of the renewal term are contained in one agreement, dated January 1, 1949, signed by the plaintiff, the Executors and the deceased composer's widow, and provides for the payment of royalties by Boosey & Hawkes Inc. to those who are legally entitled thereto. These royalties are identical, whether they are payable to the plaintiff, his mother and brother in equal shares, or to the defendant, SUCHOFF, as Trustee.

The plaintiff in this action asserts the claim that the said musical work is not a posthumous work and that, therefore, he, as a surviving son of the composer, is entitled to the United States renewal. In furtherance thereof, plaintiff filed with the Copyright Office an application to register his claim to the renewal copyright.

The defendant, SUCHOFF, asserts the claim that said musical work is a posthumous work and that as a posthumous work, BOOSEY & HAWKES is the proprietor thereof subject to the payment of royalties to the Trustee, as successor in interest to the Executors, pursuant to the 1939 agreement between the deceased composer and BOOSEY & HAWKES.

Whether or not the said musical work be a posthumous work, the United States copyright has been renewed by virtue of the filing of the applications for renewal by BOOSEY & HAWKES and by the plaintiff.

Whether or not the said musical work be a posthumous work, the defendant, BOOSEY & HAWKES, is the owner of the United States renewal term of copyright of the said musical work by reason of the assignments referred to above.

BOOSEY & HAWKES' obligation pursuant to the agreement under which it acquired plaintiff's interest in the renewal copyright and the Estate's interest in the renewal copyright, is to pay the royalties earned by the said musical work in the United States, during the United States renewal term of copyright which came into being on March 20, 1974, to those who are legally entitled to receive the same. BOOSEY & HAWKES will pay such royalties to the defendant, SUCHOFF, as Trustee, if this Court declares said musical work to be a posthumous work. If, on the other hand, this Court declares said musical work not to be a posthumous work, BOOSEY & HAWKES will pay such royalties to the widow, Edith Pasztory Bartok, the plaintiff, Peter Bartok, and the other son, Bela Bartok, in equal shares. The defendant, BOOSEY & HAWKES, has pleaded a counterclaim against the plaintiff and a cross-claim against the defendant, SUCHOFF, requesting a declaratory judgment in accordance with the foregoing.

BOOSEY & HAWKES is submitting, simultaneously herewith, a Memorandum of Law prepared by its attorneys, in which it takes the position that the musical work "CONCERTO FOR ORCHESTRA" is a posthumous work.

Plaintiff has submitted with his affidavit, a copy of a letter dated December 27, 1943 from Bela Bartok (Ex. 8). We submit herewith a copy of a letter sent to Bela Bartok by Mr. Hawkes of Boosey & Hawkes, Limited dated May 23, 1945 (EXHIBIT II). It appears from the third paragraph of this letter, that as of May 23, 1945 proofs for the musical work "CONCERTO FOR ORCHESTRA" had been sent from England to Bela Bartok in the United States; that these proofs were subject to correction

by the composer; and that revised proofs incorporating the composer's corrections would have to be submitted to the composer before the work could be printed. Bela Bartok died six months later.

The "CONCERTO FOR ORCHESTRA" is a serious work of great importance and complexity. On the argument of this motion an engraved printed copy of the work as published will be submitted to the Court. It consists of 147 pages and takes 35 minutes to perform.

Plaintiff, in Paragraph 16 of his affidavit, refers to other musical works composed by Bela Bartok. These works (except "The Husband's Grief" which has not been published or copyrighted) were copyrighted in the name of BOOSEY & HAWKES, LIMITED, or its affiliate, in the same manner as the "CONCERTO FOR ORCHESTRA". In other words, where the publication and copyright took place after the death of the deceased composer, the copyright registration stated the date of publication and the fact that the composer was deceased, as was done in the copyright registration of the "CONCERTO FOR ORCHESTRA".

The defendant, BOOSEY & HAWKES INC., respectfully requests summary judgment in its favor on its counterclaim and cross-claim for the relief demanded in its answer.

Sworn to before me this
8th day of May, 1974.

W. STUART POPE

MAXWELL OKUN
NOTARY PUBLIC, State of New York
No. 31-520715
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT I, Annexed to Foregoing Affidavit

CLASS E for. No. 1281

COPYRIGHT OFFICE
OF THE UNITED STATES OF AMERICA

THE LIBRARY OF CONGRESS :: WASHINGTON

CERTIFICATE OF COPYRIGHT REGISTRATION

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, as amended by the Act approved March 2, 1913, that of the musical composition named herein, by a citizen or subject of a foreign state or nation, ONE complete copy of the best edition, published in a foreign country, has been deposited in this Office under the provisions of the Act of 1909, as amended by the Act approved March 28, 1914, and that registration of a claim to copyright for the first term of twenty-eight years for said work has been duly made in the name of
Hawkes & Son (London) Ltd.,
295 Regent St.,
London, W.1, England

Title: Concerto for Orchestra. Full score.
Music by Bela Bartok, of Hungary. Deceased.

Date of publication Mar. 20, 1946

Copy received Apr. 10, 1946

Published by Hawkes & Son (London) Ltd., at London.

DEAL

Sam B. Warner
Register of Copyrights

OFF. L. C. 100

EXHIBIT I

EXHIBIT II, Annexed to Foregoing Affidavit

Copy sent to H.H.

May 23rd., 1945.

Mr. Bela Bartok

Dear Bartok,

dd It seems that I have owed you a letter for some considerable time and the present occasion is a propitious one to write you for several reasons:-

dd First of all to tell you of the great relief we feel here at the end of the War in Europe and secondly to congratulate you on your election to the new Hungarian Parliament, which Hans has written me about. He also advises that you are likely to return to Europe at an early date: I want you to know that if I can help you in this, I shall be only too happy and I sincerely hope that you will manage to pass via London on your way, for I am sure that a number of your friends and admirers here would be more than happy to see you.

dd By now the proofs of the CONCERTO FOR ORCHESTRA and the CONCERTO FOR VIOLIN have been through your hands. I hope you are satisfied with them: both were, of course, very difficult jobs to do under existing circumstances. We made the very best effort we could to avoid too many errors: it would seem that we should have to get you revised proofs before printing can go forward. On the other hand, of course, if you feel we are competent enough to correct your music markings here, there would be a saving of very considerable time. We may be printing both works here in a small edition to start with. I say this because I feel so certain that the Scores of these major compositions of yours should be available at the first opportunity on the Continent, as well as in U.S. and Great Britain. I have deliberately withheld any performances of the "Concerto for Orchestra" in this country owing to the orchestral conditions being unpropitious but I am now negotiating with the B.B.C. Symphony Orchestra and Sir Adrian

-2-

Mr. Bela Bartok

May 23rd., 1945.

Boult for a performance this Winter. The pity of it is that we only have one Concert Hall in London at the moment, viz:- the Albert Hall and the results obtained for works of the calibre of the Concerto are small and poor. This situation may alter in the next few months but I am sure that you will agree that I am acting in your best interest in not allowing a poor performance to take place.

!! Regarding the VIOLIN CONCERTO, I am happy to tell you that 4 performances have been arranged with the Liverpool Philharmonic Orchestra under Dr. Malcolm Sargent in October and November (2 Liverpool 2 Manchester) with Max Rostal as Soloist. He is a first class performer and one of the best Violinists and Violin Teachers we have in this country. There is just a likelihood that Yehudi Menuhin, who is here now, may give the work in the next week or so but his public appearances are uncertain.

!! How progresses my SEVENTH STRING QUARTET? I am sure that you will be interested to hear that I am arranging for Six Chamber Music Concerts in October and November this year at the Wigmore Hall, which are to be based on your existing Six String Quartets. I felt it desirable that the whole of your String Quartet composition should be given in a complete Cycle like this. The rest of the Programmes will be built around these Quartets, one of the six Quartets being the highlight of each of the Six Concerts. I hope to send you further details of this little 'Festival' in due course.

!! I expect to return to America towards the end of September

-3-

Mr. Bela Bartok

May 23rd., 1945.

and I hope you will still be there. Matters regarding travel should then be much easier and I shall look forward once again to greeting you and Mrs. Bartok.

With Best Wishes,

Believe me to be,

Yours very sincerely,

[Re-typed]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BARTOK,

Plaintiff,

-against-

BOOSEY & HAWKES INC. and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants.

STATEMENT PURSUANT TO
RULE 9(g) OF THE
GENERAL RULES

73 Civ. 4570 (R.O.)

The defendant, BOOSEY & HAWKES INC., pursuant to Rule 9(g) of the General Rules of this Court, submits the following statement of material facts as to which it contends there is no genuine issue to be tried:

1. Prior to the commencement of this action, plaintiff, PETER BARTOK, assigned to defendant, BOOSEY & HAWKES INC., all his right, title and interest, if any, in and to the United States renewal term of copyright in the musical work "CONCERTO FOR ORCHESTRA" composed by Bela Bartok, subject to the payment by BOOSEY & HAWKES INC. of royalties to those who may be legally entitled thereto. (Par. EIGHTH of defendant, BOOSEY & HAWKES INC.'s answer, and Par. 1 of plaintiff's reply to the counterclaim of the defendant, BOOSEY & HAWKES INC.)

2. Prior to the commencement of this action, Victor Bator and Julius G. Baron, as Executors under the Last Will and Testament of Bela Bartok, deceased, the predecessors in interest of defendant, BENJAMIN SUCHOFF, as Trustee of the Estate of Bela Bartok, assigned to defendant, BOOSEY & HAWKES INC., all their right, title and interest, if any, in and to the United States renewal term of copyright in the musical work,

"CONCERTO FOR ORCHESTRA", composed by Bela Bartok, subject to the payment by BOOSEY & HAWKES INC. of royalties to those who may be legally entitled thereto. (Par. NINTH of defendant, BOOSEY & HAWKES' answer, and the failure of the defendant, BENJAMIN SUCHOFF, as Trustee, to answer the cross-claim against him asserted by the defendant, BOOSEY & HAWKES INC.)

The defendant, BOOSEY & HAWKES INC., denies that there is no genuine issue as to the facts set forth in Paragraph 21 of plaintiff's statement pursuant to Rule 9(g) of the General Rules.

Dated: New York, New York,
May 1, 1974.

Respectfully submitted,

FISHBEIN & OKUN
Attorneys for Defendant,
Boosey & Hawkes Inc.
609 Fifth Avenue
New York, New York 10017
PL 2-3770

BY Maxwell Okun
Maxwell Okun - Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BARTOK,

Plaintiff

-against-

BOOSEY & HAWKES, INC. and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants.

CROSS-MOTION OF DEFENDANT,
BENJAMIN SUCHOFF AS TRUSTEE
OF THE ESTATE OF BELA BARTOK

73 Civ. 4570 (R.O.)

S I R S :

PLEASE TAKE NOTICE that the defendant, Benjamin Suchoff as Trustee of the Estate of Bela Bartok, pursuant to Rule 56 of the Federal Rules of Civil Procedure will cross-move this Court on the hearing of plaintiff's motion for summary judgment on the 14th day of June 1974 before the Hon. Richard Owen, Room 905, United States Courthouse, Foley Square, New York, New York at 2:15 in the afternoon, or as soon thereafter as counsel can be heard, for an order granting summary judgment in the above entitled action in favor of the defendant Benjamin Suchoff, as Trustee of the Estate of Bela Bartok, as prayed for in his answer and for such other, further and different relief as this Court may deem just and proper.

Dated: New York, New York
May 22, 1974

Yours etc.,

WOLF POPPER ROSS WOLF & JONES
Attorneys for Defendant,
Benjamin Suchoff, Trustee

By: SHIRLEY P. THAU - of counsel

TO:

ORENSTEIN, ARROW, SILVERMAN & PARCHER, P.C.
Attorneys for Plaintiff
1370 Avenue of the Americas
New York, New York 10019

FISHERMAN & OKUN, Esqs.
Attorneys for Defendant, Boosey & Hawkes, Inc.
609 Fifth Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BARTOK,

Plaintiff,

-against-

BOOSEY & HAWKES, INC. and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants.

AFFIDAVIT IN SUPPORT OF
CROSS-MOTION OF BENJAMIN
SUCHOFF AS TRUSTEE AND IN
OPPOSITION TO PLAINTIFF'S
MOTION.

Index # 73 Civ. 4570(R.O.)

STATE OF NEW YORK]
] SS.:
COUNTY OF NEW YORK]

SHIRLEY P. THAU, being duly sworn, deposes and
says:

1. I am an attorney at law and a member of the
firm of Wolf Popper Ross Wolf & Jones, the attorneys for de-
fendant, Benjamin Suchoff, Successor Trustee under the Will of
Bela Bartok, deceased. Dr. Suchoff was appointed Successor Trustee
of the trust under Bela Bartok's Will by the Surrogate's Court,
New York County in 1968 following the death of his predecessor,
Victor Bator in December, 1967.

2. I make this affidavit in support of the cross-
motion of the defendant, Benjamin Suchoff, as Trustee, for summary
judgment and in opposition to the plaintiff's motion for such
relief.

3. The composer Bela Bartok died at a New York
hospital on September 26, 1945. His Will was admitted to probate
in the Surrogate's Court, New York County in January, 1946.
Attached hereto, made part hereof, and marked Exhibit "A" is a copy

of Bela Bartok's Will.

4. "Concerto for Orchestra" was published with notice of copyright in March, 1946. The Copyright Law (17 U.S.C. §24) grants the right of renewal of a posthumous work to the proprietor of the copyright. "Concerto for Orchestra" entered the 28th year of the original term in March, 1973. Immediately thereafter defendant, Boosey & Hawkes, Inc. on behalf of its affiliate, Hawkes & Son (London) Ltd., proprietor of the original copyright, applied for the renewal term as did also the plaintiff, Peter Bartok, claiming as "child of the author, Bela Bartok, deceased." Plaintiff is entitled to the renewal term together with his mother, the decedent's widow, and his half brother, Bela Bartok II only if "Concerto for Orchestra" despite the fact of publication and copyright six months after the composer's death is not "posthumous."

5. Plaintiff stresses several factors unrelated to the date of publication and copyright and not referred to in the statute as reason for eliminating "Concerto for Orchestra" from the category of "posthumous work", among them that the work was given several concert performances and was broadcast on the radio prior to the composer's death.

6. The composer was under exclusive contract with Boosey & Hawkes Limited (an affiliate of the defendant, Boosey & Hawkes, Inc.) at the time of his death. A copy of that contract is attached as Exhibit 4 to plaintiff's moving affidavit. Pursuant to that agreement the decedent assigned international rights, including the right to obtain copyright, to Hawkes & Son (London) Limited (another affiliate of the defendant publisher) subject to reservation of royalties. The composer's execution of the assignment is also relied upon by plaintiff to eliminate "Concerto for Orchestra" from the "posthumous" category.

7. The above facts are not disputed except that it is the position of the defendant, Dr. Benjamin Suchoff, as Successor Trustee, that such facts are irrelevant to the determination whether "Concerto for Orchestra" is a posthumous work. It is well established that public performance of a work such as a play or musical composition does not constitute publication under the Copyright Law. It does not destroy the common law copyright. Performance is unrelated to the right or procedure by which statutory copyright is obtained.

8. The composer's execution of the assignment to the publisher of the right to obtain copyright also is irrelevant to the determination whether a work is posthumous. It must be noted that the composer was under contract to the publisher to whom the assignment was made for a period of time which extended for several years beyond the date of his death (Exhibit 4, Peter Bartok's affidavit). Had the composer not executed the assignment prior to his death, it is unquestioned that his Executors to whom he bequeathed his unpublished works (see Exhibit "A" par. 3) would have been required to execute the assignment. Thus execution of the assignment was a mere formality.

9. Plaintiff also argues that a publisher should not be able to benefit from its wrongful act and claims that the publisher unreasonably delayed publication of "Concerto for Orchestra". This fact is disputed by the defendants who also differ with the plaintiff in arguing that the alleged delay by publisher is not relevant. However, since materiality of the issue is for the Court's determination, the actual facts will be set forth.

10. Bela Bartok executed the assignment of "Concerto for Orchestra" to the publisher in November, 1943 (See Exhibit 7, to plaintiff's moving affidavit). The publisher to whom the rights

were assigned is an English company. The question of publication therefore arose in the midst of World War II and during a period of extraordinary conditions in England. Delay in publication as a result of the conditions beyond the control of the publisher is expressly excused in the contract (See Exhibit 4, plaintiff's moving affidavit, par. "(3)"). Some indication of publishing conditions in England then is conveyed in the letter from Boosey & Hawkes Ltd. to the composer, dated January 8, 1943, a copy of which is herewith attached, made part hereof and marked Exhibit "B".

11. Despite wartime problems the publisher apparently went forward with plans for the publication for "Concerto for Orchestra". The procedures prior to publication included the preparation of a legible copy by a copyist of the very long and complex manuscript, checking and correction of the copyist's version, the engraving of the work and the composer's revisions and corrections prior to actual publication. Attached hereto, made part hereof and marked respectively Exhibits "C-1 through C-9" are copies of letters exchanged between the composer and the publisher with respect to the preparation for publication. The last of these (Exhibit C-7), dated June 13, 1945, acknowledged receipt from the composer of "... the first two batches of corrected proofs of Concerto for Orchestra. . ." The Court's attention also is drawn to the reference in the March 6, 1945 letter from Boosey & Hawkes Ltd. to the deceased composer (Exhibit C-4) to a "new ending" to the Concerto.

12. Your deponent has reason to believe that Bela Bartok was still in process of correcting and revising the proofs for "Concerto for Orchestra" on the eve of his death. I was privileged earlier in the year, in the company of my client, Dr. Benjamin Suchoff, to

have dinner with Bela Bartok II, the elder of the deceased composer's sons, and George Sandor, the internationally known pianist who had been a student of the deceased composer. In the course of reminiscing Mr. Sandor told us that he had been visiting with Bela Bartok at the hospital the week of his death. Mr. Sandor told us quite by chance that on the occasion of his last visit, the day before the composer died, the composer had pulled out part of the proofs for "Concerto for Orchestra" and told Mr. Sandor that his illness was preventing him from completing certain corrections. According to Mr. Sandor, the composer asked him to make certain corrections and then to mail the manuscript to the publishers in London. Should these facts in the opinion of the Court be relevant to the issue to be determined, the opportunity is requested to locate the present whereabouts of Mr. George Sandor so that his affidavit concerning these facts can be obtained.

13. It thus appears from the correspondence attached as Exhibits C-1 - C-9 that there was no deliberate delay by the publisher in the publication of "Concerto for Orchestra." In any case, plaintiff was not a party to the publication agreement and was not a beneficiary thereof. Had there been any failure by the publisher to fulfill its obligations to the decedent, the rights with respect to such breach or default passed to the decedent's Executors and Trustees and not to the plaintiff.

14. The Copyright Law concerns itself with the statutory copyright which is to be obtained by publication of a work with notice of copyright. Neither the statute nor the legislative history provides any justification for believing that the legislature intended the word "posthumous" when used in the statute to refer to anything other than simply all works published

after the author's death. None of the distinctions attempted by the plaintiff justifies departure from the accepted meaning so as to create further complexity in an already complex statute. Furthermore, giving "posthumous" as used in the statute, its accepted meaning will fulfill the deceased composer's intentions as he expressed them in his Will - to give his widow for her life the benefit of all his compositions (with remainder to the plaintiff).

WHEREFORE, deponent prays that the application of the defendant, Benjamin Suchoff, as Trustee, for summary judgment be granted and "Concerto for Orchestra" be declared a posthumous work of which an affiliate of the defendant, Boosey & Hawkes, is the copyright proprietor and entitled to the renewal term, subject to the obligation to account to the co-defendant, Benjamin Suchoff, as Successor Trustee under the Will of Bela Bartok, for the royalties due with respect to the exploitation of said work.

Sworn to before me this

29th day of May, 1974

Estelle Burns

ESTELLE BURNS
Notary Public, State of New York
No. 41-0505675
Qualified in Queens County
Commission Expires March 30, 1976

Shirley P. Thau
SHIRLEY P. THAU

EXHIBIT A, Annexed to Foregoing Affidavit

I, BELA BARTOK, of the City, County and State of New York, being of sound and disposing mind and memory, and mindful of the uncertainties of life, do hereby publish and declare this to be my Last Will and Testament, hereby revoking all prior wills by me made.

FIRST: I hereby direct my executor hereinafter named, to pay all my just debts and funeral expenses as soon after my death as may be practicable.

SECOND: I hereby give, devise and bequeath all of my property of whatsoever nature, real, personal or mixed, which may be situate in the Kingdom of Hungary or Germany or in any country which at the time of my death may be subject to the control of the German Government, to my eldest son Bela.

THIRD: I hereby give, devise and bequeath all of the rest, residue and remainder of my property, real, personal or mixed, wheresoever situate, to my executors hereinafter named, in trust, however, to invest and reinvest the same, and to collect the rents, issues, income and profits thereof, to my wife EDITH PASZTORY BARTOK, and upon her death to pay the principal of such trust fund to my son PETER. There shall be deemed included in this residuary bequest all of

my copyrights, all rights of renewal copyrights which I may now have or may hereafter acquire, and all rights in unpublished manuscripts. So long as the trust shall be in force my executors and trustees are specifically empowered to exercise any rights of renewal copyright which may arise with respect to any of my compositions under the laws of the United States of America.

- FOURTH: So long as the trust provided for in paragraph "THIRD" hereof remains in existence, the following provisions shall apply:
- (a) My trustees shall have full power of sale with respect to any real property which may at any time form a part of the trust estate.
 - (b) The trustees shall have the right to invest in any form of investment regardless of whether the investment is of a type sanctioned by the laws of the State of New York for the investments of trustees and specifically are authorized to invest in common stocks and bonds of all kinds, secured and unsecured, second mortgages and interest in real property of whatever nature.
 - (c) My trustees shall have the right to take any action with respect to investments which might be taken by the owner thereof.

Without intending to limit the generality of the foregoing, my trustees are specifically authorized to take part in corporate proceedings of all kinds; to institute and defend class actions; to cause themselves to be elected to the board of directors and to any other office of any corporation, the stock of which may form a part of the trust fund; to foreclose collateral security; to be purchasers at any such foreclosure; to administer the property thus acquired, whether real or personal; to execute leases of any property which may form part of the trust fund, now or hereafter, for any period of time regarded by my trustees as expedient and regardless of limitations imposed by law.

(d) The trustees shall not be required to amortize copyrights or the premiums on securities purchased above par.

(e) The trustees are expressly authorized to retain as part of the trust fund any and all copyrights which may belong to me at the time of my death, whether at common law or by statute or treaty. My trustees shall be authorized to take any and all steps which may from time to time be required in order to protect such rights, including but not limited to prosecution or defense of actions arising out of alleged infringements of copyright, taking appropriate proceedings for the renewal thereof, instituting actions for the

of royalties, entering into license agreements to license or otherwise dispose of any such composition or copyright or rights therein upon such terms as the trustees deem appropriate at the time and in general, to do any and all acts with respect to musical or literary properties which I may own at the time of my death which I could do if I were living.

FIFTH:

I hereby nominate and appoint as executors of this my Last Will and Testament, and as trustees of the trust hereinbefore provided, my friends VIKTOR BATOR and JULIUS BARON. In the event either of the said persons should not be available, or should be disqualified from serving as executor or trustee, or should vacate either office, the other one of them may serve as sole executor or trustee. Any person serving as sole executor or sole trustee from time to time may appoint a co-executor or co-trustee to serve with him. In the event neither Viktor Bator nor Julius Baron shall be available to serve as executor or as trustee, they or the survivor of them shall have the right to nominate two persons deemed by them or their survivor suitable to serve as executor or trustee or both. If neither of them qualify as executor or as trustee and they fail for whatever reason to nominate executors or trustees,

my wife, GITTA PASZTORY BARTOK shall have the right to name the executors or trustees or both.

SIXTH:

I nominate and appoint my wife as the guardian of my son, PETER, if he should be a minor at the time of my death.

SEVENTH:

My executors and trustees and the guardian aforesaid shall not be required to give any bond or undertaking in order to qualify in any such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

[Break in text]

SIGNED, SEALED, PUBLISHED AND DECLARED, in the Borough of Manhattan, City and County of New York, as and for his Last Will and Testament, by the above named Testator, BELA BARTOK, in the presence of each of us, who at his request and in his presence and in the presence of each other have hereunto set our names as witnesses this 28th day of March, in the year Nineteen Hundred and Forty-three.

W. Julius Hollo residing at 141 E 88th
New York, N.Y.

Elsa Hollo residing at 141 E 88
New York City

Eleanor Loeblich, R.N. residing at Sherman Sq. Hotel
70th St & Bway, N.Y.C.

[Re-typed]

EXHIBIT B, Annexed to Foregoing Affidavit

Hausry & Haukes
LIMITED

EVERYTHING IN MUSIC.

223 Regent Street London W.1



January
6th.,
1943.

REF. NO. 12/11.

Mr. Bela Bartok,
3045, Cambridge Avenue,
Brooklyn, N.Y., U.S.A.

My Dear Bartok,

I have had a letter from Heinsheimer advising me that he had the pleasure of meeting you again the other day and discussing numerous matters in connection with your goodself.

First of all, let me say how pleased I was to hear that there is a likelihood that we may be able to manage your affairs from the Artists point of view once again. This would give me great pleasure, for you know the interest I have in you and Mrs. Bartok and the desire always to serve you to the maximum of our ability.

Heinsheimer tells me that you are still not yet fully recovered from your indisposition but that you feel much better. I hope now that your son is with you and the worries of 1942 are behind you, you will be able to settle down once again and soon regain your full health.

Let me also thank you for your co-operation regarding the re-publication of the works in the U.S. edition. Now that we are able to exploit these properly in the U.S., having freed ourselves of the A.M.P. complications, I think we shall be able to make some progressive moves. Certainly Heinsheimer has the matter well in hand and has instructions from me to do all that is necessary to get these works into circulation wherever possible. On this side, of course, it is not so easy, for the restrictions on paper, advertising, etc. are severe and even if we had the paper, there are very few printers left who can do this work. We only have about one-third of our Printing Dept. working today as compared with pre-war, owing to the drainage of labour into the armed forces and the war effort.

I do my best to attend to musical matters here but I am fully

WOMAN-TO-WOMAN
ALFRED T. H. H. H. H.
MAN-TO-WOMAN
NEW YORK
PARIS
MUSICAL
TORONTO

B. H. H. H.

Bartok
Archives

BOOSEY & HAWKES, No. _____
 UNITED
 CONTINUATION SHEET No. 1

B. H. B. B.

Bartok
 Archives

January
 8th.,
 1943.

Mrs. Bela Bartok.

occupied on other work and find myself from time to time rather out of touch with details. However, the whole of our organization is being carried on most effectively and we have made great progress with recent publications; you may be assured, therefore, that your interests are being well looked after on this side.

I should like to wish Mrs. Bartok, your son and your goodself the very best for 1943 and if there is anything at all that can be done at this end for you, you have but to command me.

Believe me,

Yours sincerely,

Joseph Hawkey

EXHIBIT C-1, Annexed to Foregoing AffidavitBartok
Archives

BH BB

July 12th, 1944

Mr. Bela Bartok
32 Park Avenue
Saranac Lake, New York

Dear Mr. Bartok:

Thank you for your letter. I am very sorry that you have so much trouble with Santini. I am keeping your letter here on file.

Re: Concerto for Orchestra; London. I sent them a copy of your manuscript, NOT the copy made by Turner and Weisleder, and they would do the engraving from this photostat of your own manuscript. Therefore, I wonder whether it will be necessary for you to look over the copy before they start engraving. Should this be the case, please let me know. I will then cable London not to proceed and will send you a copy of the score for you to look over which we will then send to London. However, it took this copy three months to get there and I would like, if possible, to avoid further delay as they seem to have engravers available right now and the situation might be changed in a couple of months. They will, of course, send proofs here before the score is printed so you can correct these proofs and make all the necessary alterations in the proofs. If I do not hear from you I presume it will be all right for them to engrave from the photostat of your manuscript.

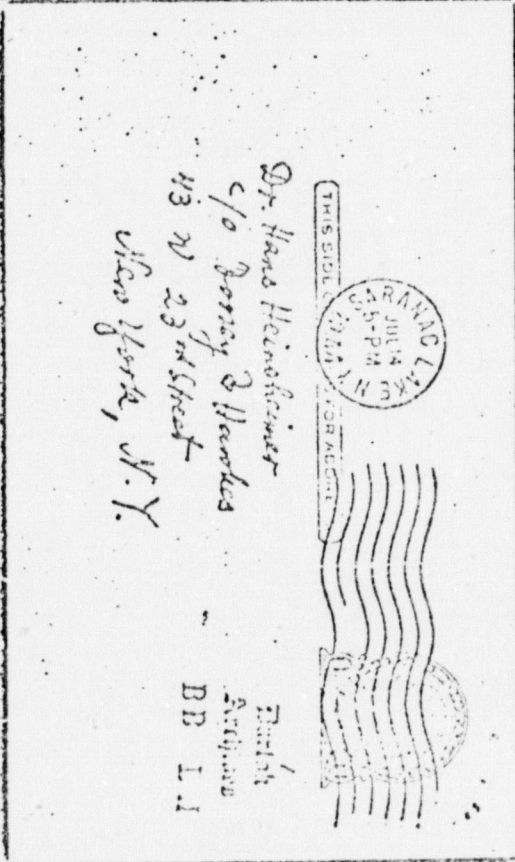
Yours sincerely,

H. W. Weinsheimer

HWH:ew

C-1

EXHIBIT C-2, Annexed to Foregoing Affidavit



J. 1444

July 15, 1944

Dear Mr. Heinemann, B D B M Dartok Archives

I got an inter from Sentinry. It seems that this matter is now settled for the future (I got a different list of 12 for my friends).

I really did not imagine from your first information that the engraving is going to be the new. I wonder why now the engraver can use that old copy: many parts are so to speak illegible. The situation is this:

As you remember, Mr. Turner discovered some mistakes — signs of pen — in the 1st and 2nd movement. Later (in Jan. when making the printing arrangements) I discovered some other, and a certain number of them in the 3-5 movement. I sent you a list (in two or three) for the copyist (a list of the Turner discoveries does not exist — probably). If you still have this list and would send a copy of it to London, that would be a help. — I corrected (very little with red pencil) in my copy which, however, was unfortunately, is now in storage.

In the worst case, they may engrave it according to the red copy, and the changes will have to be introduced into the proofs. All the all these are not too many of them: a few wrong note-heads, a few missing —

C-2

QUESTIONS ANSWERED (ORIGINALS) BY
PALING'S BUILDING, 225 STREET,
ALBANY

CABLES:
BONABEL NEW YORK

З. П. В. В.
Евдок
Архимандрит

New York, N. S. A.
43-47 WEST 23RD STREET
December 9th, 1944

Dear Mr. Partok:

11 The "Violin Concerto" is already engraved and proofs should be with us either just after Christmas or very early in the new year. I feel sure that you will be pleased with this information and I am delighted that both works have been completed so quickly.

11 I trust you and Mrs. Partok are well. I shall be away in Toronto next week but will be back just before Christmas when I shall look forward to seeing you.

Yours very sincerely,

lengthwise.

Ralph Hawkes

- 3) ^{Ralph Harkes} *Thurbergides: Transylvanian* var. *Edlin-Ford*.
- 4) *John Reier: Völkisch und Kunstlied in Deutschland. 1956.*
" " *Kunstlied im Volksmund. 1956.*
- 5) *J. Bartók and Zoltán Kodály: Transylvanian Hungarians Folk Songs.*
Quadruplet, 1921 (?)
- 6) *Giuseppe Tigni: Canti popolari toscani. Firenze, 1956.*
- 7) *Rebecca West: Black Lamb and Grey Falcon. One volume edition*
The Viking Press, New York. 1943.

68) Cattle, Sheep & Goats, T.H. Song

C-7

EXHIBIT "C-3"

EXHIBIT C-4, Annexed to Foregoing Affidavit

ROBERT HAWKES, PUBLISHER
10 WEST 23RD STREET
NEW YORK CITY

ROBERT HAWKES, PUBLISHER
10 WEST 23RD STREET
NEW YORK CITY

ROBERT HAWKES, PUBLISHER
10 WEST 23RD STREET
NEW YORK CITY

ROBERT HAWKES, PUBLISHER
10 WEST 23RD STREET
NEW YORK CITY

TELEPHONE
GRAMERCY 5-1146-1147

CABLES
BOHARL NEW YORK

Boosey & Hawkes, Inc.

Music Publishers

New York, U.S.A.
43-47 WEST 23RD STREET

B. H. B. E.

Baruch
Archibald

March 15, 1945

Dear Mr. Bartok:

As I was told that I should not call on you before next Monday I thought I should let you know that I had a most pleasant meeting with Koussevitzky this morning. He asked me to tell you how happy he is about the new ending and that he will play the Concerto "many times" next season. He will repeat it again in New York among others. He has asked Menuhin to play the Violin Concerto in Boston next season and knew already from Primrose about the Viola Concerto which he hopes to perform the year after.

Best wishes for a speedy recovery and sincerest regards

H. W. Heinshelner
H. W. Heinshelner

EXHIBIT "C-4"

EXHIBIT C-5, Annexed to Foregoing Affidavit

[Letterhead of Boosey & Hawkes, Inc.]

March 2[8], 1945

Mr. Bela Bartok
 309 West 57th Street
 New York 19, New York

Dear Mr. Bartok:

dd I quote the following paragraph from a letter received today from London:

"At our last concert we performed the Sonata for Two Pianos and Percussion by Bartok, which had an outstanding success. It was played this time by the young Australian pianist, Noel Newton Wood, and Ilona Habes. They repeated the piece again today in the National Gallery (lunch time concert) where it was very well received by a rather conservative public. Another performance in a smaller circle is tonight, in the Philharmonic Arts Club. I think we have now the right team for the piece. Noel Newton Wood is very good indeed, and they are constantly improving. I would like very much that we include this piece as a regular feature in our programmes and do it again next year. Perhaps you would tell Bartok about the performance, and mention the young pianist, who has now been invited to Australia for a season."

dd In the same mail I received a letter from Mr. Stein dated March 14th in which he says that the readers proofs of the Concerto for Orchestra have now been dispatched. He sends in a small list of doubtful passages in the piece which I shall submit to you as soon as the proofs come in.

dd I have furthermore had word from London that the proofs of the Children's Pieces have been dispatched and I will show them to you once more before they are printed.

dd I called the Ballet Theatre yesterday and have been assured that the production of the Concerto for Orchestra is definitely planned for October at the Metropolitan Opera House.

Sincerely yours,

/s/ H. W. Heinsheimer

H. W. Heinsheimer

HWH:sw
 [Re-typed]

EXHIBIT C-6, Annexed to Foregoing Affidavit

EDITIONS HAWKES.
10, RUE DU FAUCON ST. DENIS.
PARIS, 108

BOOSEY, HAWKES, BELWIN, INC.
43-47 WEST 23RD STREET,
NEW YORK CITY

BOOSEY & HAWKES, LTD.
255 REGENT STREET,
LONDON, W.1.

BOOSEY & HAWKES (AUSTRALIA), LTD.
FALING'S BUILDINGS, 428 STREET,
SYDNEY

TELEPHONE:
GRAMERCY 3-1146-1147

CABLES:
BOHARER NEW YORK

Boosey & Hawkes, Inc.

Music Publishers

New York, U. S. A.
43-47 WEST 23RD STREET

B
Bartok
Archives

May 5th, 1945

Mr. Bela Bartok
309 West 57th St.
N. Y. C.

Dear Mr. Bartok:

JJ Thank you for your letter. I am very sorry to hear that you and Mrs. Bartok are both ill and if there is anything I can do please let me know. I hope you will take this offer as it is meant: very sincere indeed.

JJ I am sending you by messenger the Children's pieces as per your request and the proofs of the VIOLIN CONCERTO which came in today. This will be printed in London and the proofs will be returned there.

JJ I have already dispatched the proofs of the first three movements of the CONCERTO FOR ORCHESTRA to London and would appreciate your letting me know as soon as the fourth and fifth have been completed so we can send those off.

JJ I read that you have been elected to the Hungarian Parliament and that you have accepted. I presume you will soon go back to Europe. George Sebastian tells me that Kodaly likewise has been elected and that he is alright and safe. Do you have any confirmation about this?

Very sincerely yours,

H. W. Heinemann
H. W. Heinemann

HE:RZ

C-6

EXHIBIT C-7, Annexed to Foregoing Affidavit

BARTOK
ARCHIVES

May 15th, 1945

Mr. Bela Bartok
309 West 57th Street
New York 19, New York

Dear Mr. Bartok:

// I would very much like to know how you are and I hope that you are now fully recovered.

// I am anxious to get further installments of the "Concerto for Orchestra" for London. Mr. Hawkes has just written to say that he will be able to print the score in England so everything will be all right. You will get a second proof of the piece and it will then be printed in England and we will get copies here. After the full score has been printed in London we will print the pocket score in this country.

// Please let me hear from you when you expect to have the two missing covenants ready for shipment to England and when you expect to correct the Violin Concerto.

Very sincerely yours,

H.W. Heinsheimer

HWH:sw

[Re-typed]

EXHIBIT C-8 Annexed to Foregoing Affidavit

Copy sent to H.H.

May 23rd., 1945.

Mr. Bela Bartok

Dear Bartok,

dd It seems that I have owed you a letter for some considerable time and the present occasion is a propitious one to write you for several reasons:-

dd First of all to tell you of the great relief we feel here at the end of the War in Europe and secondly to congratulate you on your election to the new Hungarian Parliament, which Hans has written me about. He also advises that you are likely to return to Europe at an early date: I want you to know that if I can help you in this, I shall be only too happy and I sincerely hope that you will manage to pass via London on your way, for I am sure that a number of your friends and admirers here would be more than happy to see you.

dd By now the proofs of the CONCERTO FOR ORCHESTRA and the CONCERTO FOR VIOLIN have been through your hands. I hope you are satisfied with them: both were, of course, very difficult jobs to do under existing circumstances. We made the very best effort we could to avoid too many errors: it would seem that we should have to get you revised proofs before printing can go forward. On the other hand, of course, if you feel we are competent enough to correct your music markings here, there would be a saving of very considerable time. We may be printing both works here in a small edition to start with. I say this because I feel so certain that the Scores of these major compositions of yours should be available at the first opportunity on the Continent, as well as in U.S. and Great Britain. I have deliberately withheld any performances of the "Concerto for Orchestra" in this country owing to the orchestral conditions being unpropitious but I am now negotiating

EXHIBIT C-9, Annexed to Foregoing Affidavit

[Letterhead of Boosey & Hawkes, Inc.]

June 13th, 1945

Mr. Bela Bartok
309 West 57th Street
New York City, New York

Dear Mr. Bartok:

dd I have just received the following letter from Mr. Stein:

"Will you please advise Bartok immediately that the first two batches of the corrected proofs of his Concerto for Orchestra have arrived. He wrote us very detailed about his wishes. Will you please tell him that I will deal with this properly and will answer him in full very shortly."

dd I have not heard from you about further proofs of the Concerto. As you said you would call me, I did not wish to call you again. Please get in touch with me at your convenience.

Sincerely yours,

/s/ H.W. Heinsheimer

H.W. Heinsheimer

HWH:sw
[Re-typed]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BARTOK,

Plaintiff,

-against-

STATEMENT PURSUANT TO RULE
9(g) OF THE GENERAL RULES

BOOSEY & HAWKES, INC. and
BENJAMIN SUCHOFF, as Trustee of
the Estate of Bela Bartok,
Deceased,

73 Civ. 4570 (R.O.)

Defendants.

The defendant, BENJAMIN SUCHOFF, as Trustee of the Estate of Bela Bartok, pursuant to Rule 9(g) of the General Rules of this Court, submits the following statement of material facts as to which he contends there is no genuine issue to be tried:

1. Bela Bartok, composer of "Concerto for Orchestra" died in New York on September 26, 1945. (Complaint Paragraph 20).

2. "Concerto for Orchestra" was published with notice of copyright on March 20, 1946. (Complaint Paragraph 21). Copyright registration was duly filed with the Copyright Office in the name of Hawkes & Son (London) Ltd. (Bartok affidavit, Exhibits 1 and 2).

3. Bela Bartok's Will was admitted to probate in the Surrogate's Court of the State of New York, County of New York on January 24, 1946. (Suchoff answer, Paragraph 8,

Bartok reply to counterclaim Paragraph 1).

4. Bela Bartok's Will bequeathed the residue of his estate, including copyrights and unpublished works in trust for the benefit of his widow for life with remainder to plaintiff, their son. (Thau affidavit, Exhibit A).

5. Benjamin Suchoff was duly appointed Successor Trustee under the Last Will and Testament of Bela Bartok, deceased by the Surrogate's Court, New York County, in October, 1968. (Suchoff answer, Paragraph 10, Bartok reply to counterclaim, Paragraph 1).

6. Boosey & Hawkes duly applied for the renewal term for the copyright of "Concerto for Orchestra" in the name of its affiliated company, Hawkes & Son (London) Ltd. as copyright proprietor of a posthumous work. (Complaint Paragraph 4, Bartok affidavit, Paragraph 4 and Exhibit 2, Boosey & Hawkes answer, Paragraph 1).

The defendant, Benjamin Suchoff, as Trustee under the Will of Bela Bartok denies that there is no genuine issue as to the facts in paragraph 21 of plaintiff's statement pursuant to Rule 9(g) of the General Rules of this Court and further denies the relevance and materiality of the facts set forth in paragraphs 10 and 12 through 21 of plaintiff's statement pursuant to said Rule 9(g).

Dated: New York, N.Y.
May 22, 1974

Respectfully submitted,

WOLF POPPER ROSS WOLF & JONES
Attorneys for Defendant, Benjamin
Suchoff
845 Third Avenue
New York, N.Y. 10022
(212) PL 9-4600

By: SHIRLEY P. THAU, of counsel.

[SEAL:
U.S. DISTRICT COURT
Filed Sep. 27 1974
S.D. of N.Y.]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X	:	
PETER BARTOK,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	<u>OPINION</u>
	:	
BOOSEY & HAWKES, INC. and BENJAMIN	:	73 Civ. 4570
SUCHOFF, as Trustee of the Estate	:	
of Bela Bartok,	:	
	:	#41229
Defendants.	:	
-----X	:	

OWEN, District Judge

These are cross-motions by Peter Bartok, a son of composer Bela Bartok, and Boosey & Hawkes, Bela Bartok's publisher. Twenty-eight years having passed since Boosey originally copyrighted Bartok's Concerto for Orchestra, each seeks by summary judgment, to secure the right of renewal of said copyright for the second twenty-eight year period provided under Tit.17 U.S.C. §24.

In 1943, Bartok, 62 years of age, was a sick and somewhat embittered man, the despair both of his doctors and friends. Neglect of his music was a source

of aggravation to him, as were his impecunious circumstances. But on top of this he was suffering from the leukemia which would claim his life a little more than two years later. By the summer of 1943, he was confined to a small New York Hospital room, and it was there that one day arrived an unannounced caller, Serge Koussevitzky. The famous conductor had come alone, and accepting the only chair, drew it close to the bed and began at once to explain his mission. Aware that the fiercely proud composer would accept neither charity nor an assignment he did not feel able to undertake, the conductor did not "offer" a commission to the desperately ill Bartok. Instead, lying as matter-of-factly as he could, he reported that he was acting as a courier for the Koussevitzky Foundation (set up as a memorial to his late wife Natalie) and that he was bound to leave a check for \$1000 with Bartok whether or not any new piece would be forthcoming. This figure, he added was only half of what had been set aside. Another \$500 would be paid upon receipt of the score it was hoped that Bartok could write. But the first \$500 was his irrevocably.

Orthodox medicine has no explanation for the speedy, if temporary, recuperation that ensued. The

grimmet prognoses would be confirmed soon enough, but after Koussevitzky's visit Bartok rallied so astonishingly that the incredulous specialists authorized his discharge from the hospital. The composer then went south, to Ashville, North Carolina, and it was there, between August 15 and October 8, 1943 that he wrote the Concerto for Orchestra. The first performances took place on December 1 and 2, 1944, in Symphony Hall, Boston, with Koussevitzky conducting the Boston Symphony. The work was so successful that it was repeated on December 29 and 30 in Boston, and on January 10 and 13, 1945 at Carnegie Hall in New York. Since that time this masterpiece has become a repertory staple not only of the Boston Symphony but of orchestras the world over.*

Upon completion of the Concerto in 1943, Bartok assigned his rights in the work to Boosey pursuant to their 1939 publishing contract. Boosey prepared the "parts" for the orchestra and set about printing the "full" score. However, wartime conditions -- the work was to be published in England -- and a rewriting of some of the music done by Bartok after the premiere, caused delays and Bartok was still receiving and correcting printer's proof as late as June, 1945, three

* Adapted from a program note by Harry Neville, Tanglewood, 1974.

months before his death. The Concerto was consequently not published* and copyrighted by Boosey until March 20, 1946, some six months after he died.**

The first period of copyright expiring in March 1974, both claimants to the renewal filed timely applications with the United States Register of Copyrights.

The controlling statute in this case is Title 17 U.S.C. §24, which provides in relevant part as follows:

The copyright secured by this title shall endure for twenty-eight years from the date of first publication... Provided, That in the case of any posthumous work... the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: And provided further, That in

*"Publish" in the field of music means more than printing copies of a score. It occurs "...when by consent of the copyright owner, the original or tangible copies of a work are sold, leased, loaned, given away, or otherwise made available to the general public..." (footnotes omitted). Nimmer on Copyrights §49.

**Under the contract Boosey was required to publish within six months of receiving the manuscript. There is no evidence that Bartok sought to enforce this requirement, nor is there the slightest suggestion that Boosey delayed publishing of this work in order to cause it to be "posthumous", which is the basis of its claim for the right of renewal.

the case of any other copyrighted work... the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living,... shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright:...

Each claimant contends §24 mandates the award of the renewal. Boosey, the "proprietor" of the original copyright, contends that the work is a "posthumous" work. Peter Bartok, contendint the work is not "posthumous", claims the renewal as one of the "children of the author,..." The Register of Copyrights permitted the filing of both renewals expressly declining to adjudicate as between them. All parties agree that this is a case of first impression.*

The determination of the issue thus raised requires, as I see it, consideration of (1) the purpose of Congress in providing for the renewal period in §24, and (2) the meaning of "posthumous" therein.

*Nimmer on Copyrights in §114.1, is in accord.

The rationale of the renewal period in §24 is clear. On March 27, 1908, at the Congressional Committee Hearings before the Joint Committee on Patents, the following colloquy took place between the Chairman and William Allen Jenner of New York on the subject of whether to extend the author's term of copyright for an additional fourteen years:

The Chairman: I would like to ask you a question. Would not the publisher, if a third term were given, make a contract with the author stipulating that not only was he to have control of the publication for the first twenty-eight years, but that he should control it, and the right to publish it, under the original contract, for the fourteen-year extension period and if we give another extension of fourteen years, then for the second fourteen-year period?

Mr. Jenner: It is never done, and I have some doubt about whether it legally could be done. But I should be glad to see that so provided for that it could not be done under the law.

Representative Law: Then put it in the bill itself.

Mr. Jenner: Put it in the bill itself, and say that it cannot be done, so that the author is certain to have that extension as a provision for his age or a provision for his widow and his children.

Thereafter, the Committee report on the 1909 Act stated, concerning the present twenty-eight year renewal, as follows:

Your Committee, after full consideration, decided that it was distinctly to the advantage of the author to preserve the renewal period. It not infrequently happens that the author sells his copyright outright to a publisher for a comparatively

small sum. If the work proves to be a great success and lives beyond the term of twenty-eight years, your committee felt that it should be the exclusive right of the author to take the renewal term, and the law should be framed as is the existing law, so that he could not be deprived of that right. Rothenberg, Copyright Law, "Committee Report on 1909 Act", C.I., Sec. 9 at 60 (Clark Boardman Co. 1956).

This Congressional purpose has been recognized by the Courts. See *Harris v. Coca-Cola*, 73 F.2d 370 (5th Cir. 1934) at 371:

The second period is intended not as an incident of the first for the benefit of the then owner of the expiring copyright, but as a second recognition extended by the law to the author of the work that has proven permanently meritorious.

Thus far, I would be persuaded to conclude that son Peter (and his mother and brother*) is entitled to the renewal of the copyright of his father's Concerto.

Boosey's assertion that the work is a "posthumous" work entitling it to the renewal must now be considered.

*They, of course, share this statutory right with him. See §24, supra. In that connection it is appropriate to note that under a 1949 agreement signed by son Peter, Bartok's widow, and the Estate, Boosey will pay royalties during the renewal period to the parties legally entitled thereto. Thus, irrespective of the outcome of this litigation, Bartok's widow, the sole beneficiary under Bartok's will, is protected. It is only son Peter and his brother who stand to gain hereby.

The original meaning of the word "posthumous" was "a child born after its father's death." As thus defined, it obviously has no applicability to a piece of music, and Peter Bartok takes the position, not illogically, that regardless of the dictionary definition of "posthumous" discussed infra, it cannot possibly apply to a musical work that was publicly performed a number of times by the Boston Symphony Orchestra in the composer's lifetime with the composer present, as well as being broadcast during his lifetime.

However, the word "posthumous", long used in the field of music, has in fact acquired a specific meaning. Nimmer on Copyright, §114.1 acknowledges that "The accepted dictionary definition for 'posthumous' is...published after the death of its author..." Ringer, in her treatise, Renewal of Copyright, Copyright Office Study No. 31, p. 128 states: "The generally accepted definition of 'posthumous works' is one which is published subsequent to the death of its author'."

In Shapiro, Bernstein & Co. v. Bryan, 123 F.2d 697 (2d Cir. 1941), the only judicial interpretation research discloses, Judge Learned Hand, in a dictum, utilizes the date of "publication" -- necessarily after the author's death -- to define "posthumous", the Court states (p.699):

The first class provides for "posthumous" works, i.e. those on which the original copyright has been taken out by someone to whom the literary property passed before publication.

The Register of Copyrights, in the form it has long furnished to a copyright applicant, defines "posthumous" as a "... work first published and copyrighted after the death of the author." Significantly Congress has continued to use the word "posthumous" without change in recent bills relating to the revision of the Copyright Act. Section 304 of the first Copyright Revision Bill (H.R. 2512) passed by the House on April 11, 1967, Section 304 of S.543 introduced in the Senate on January 22, 1969, and Section 304 of S.1361 introduced in the Senate on March 26, 1973, all continue to provide that a "posthumous work" is one of the classes in which the renewal vests in the "proprietor".

In the face of this, I am constrained to conclude that Concerto for Orchestra, published after Bartok's death, is a "posthumous" work within the meaning of §24. My conclusion is further supported by independent research which reveals that "posthumous" had the same meaning as much as 120 years ago, an exact parallel to the instant case being found in the compositions of Frederic Chopin.

Chopin died in 1849. A number of his works were published "posthumously" and are so designated on the scores themselves. See e.g. Frederic Chopin, Complete Works for the Pianoforte, G. Schirmer, 1894. His Rondo in C Major for two pianos, Op. 73, was published as a "posthumous" work in 1855, six years after his death. It was composed, however, in 1828, twenty-one years before his death, and was given its first performance in the Ressource, a concert hall in Warsaw, Poland, sometime in or prior to 1830, nineteen years before his death.*

Given all the foregoing, I am bound to accord the work "posthumous" in §24 the definition it has had in the field of music for over a century. I therefore declare that Bartok's Concerto for Orchestra, having been published after the death

*Chopin's Letters, Vienna House, pp. 39, 47; Chopin: His Life, Murdoch, MacMillan Co., 1935, pp. 50, 69, 393. As further examples, two of Chopin's short piano works, the waltz in F minor, Op. 69, No. 1, and the waltz in D flat, Op. 70, No. 3, published "posthumously" in 1855, were written in 1835 and 1829 respectively, and copies delivered in each case to the lady of whom Chopin was then enamored. Chopin: His Life, pp. 66, 73-4, 393; Grove's Dictionary of Music and Musicians. It is hardly likely that Chopin, a frequent performer of his own works in recital, did not on some occasion or occasions perform these works in public.

of its composer, is a "posthumous" work, within the meaning of Title 17 U.S.C. §24, and consequently Boosey & Hawkes is entitled to the right of renewal of the copyright.

The motion for summary judgment of Boosey & Hawkes is granted and that of Peter Bartok is denied. Settle order on notice.

/s/ Richard Owen
United States District Judge

September 26, 1974.

[Re-typed]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BARTOK,

Plaintiff,

-against-

BOOSEY & HAWKES INC. and
BENJAMIN SUCHOFF, as Trustee
of the Estate of Bela Bartok,

Defendants.

ORDER AND JUDGMENT

73 Civ. 4570 (R.O.)

Plaintiff having moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the defendants having cross-moved for summary judgment pursuant to said Rule, and said motions having been heard by me on the 14th day of June, 1974, and after considering the pleadings, affidavits and Exhibits filed herein, and after hearing the attorneys for the plaintiff in support of plaintiff's motion and in opposition to the defendants' motions, and after hearing the attorneys for the respective defendants in support of their motions and in opposition to the plaintiff's motion, and the Court having rendered its opinion and decision herein, it is

ORDERED, that the defendants' motions for summary judgment are granted, and the plaintiff's motion for summary judgment is denied; and it is

FURTHER ORDERED, ADJUDGED AND DECLARED, that Bartok's "CONCERTO FOR ORCHESTRA" is a "posthumous" work within the meaning of Title 17 U.S.C. Sec. 24, and that the United States renewal term of copyright therein is vested in the defendant, BOOSEY & HAWKES INC., as proprietor of the copyright in said

posthumous work, subject to the payment of royalties earned by said work in the United States during the United States renewal term of copyright to the defendant, BENJAMIN SUCHOFF, as successor Trustee under the Last Will and Testament of Bela Bartok, Deceased.

Dated: New York, New York,
October _____, 1974.

U.S.D.J.

JUDGMENT ENTERED

Clerk

